

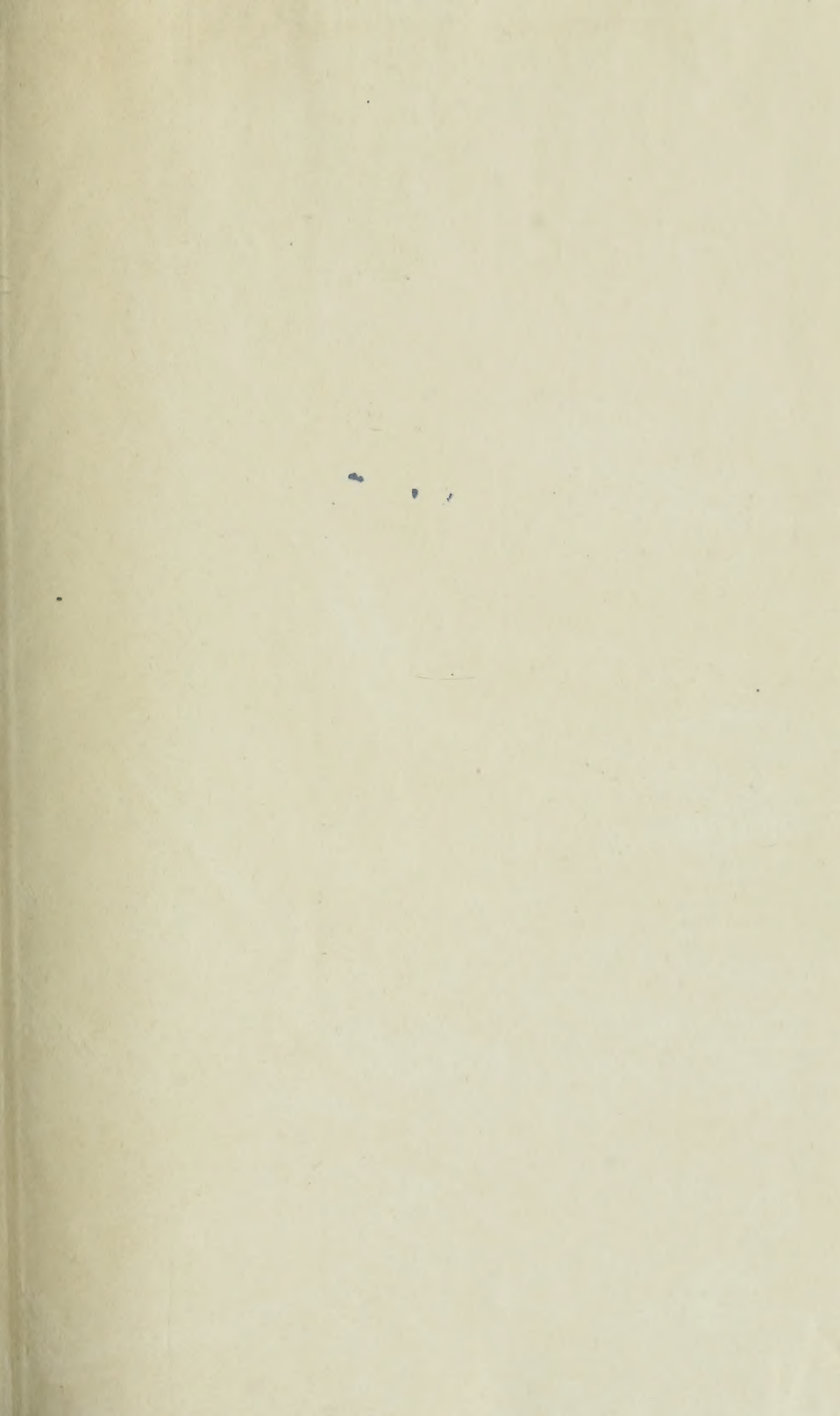
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United States
Circuit Court of Appeals
For the Ninth Circuit.

HELM AND SMITH SYNDICATE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

UPON PETITION TO REVIEW A DECISION OF THE
TAX COURT OF THE UNITED STATES

FILED

MAR 3 - 1943

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

HELM AND SMITH SYNDICATE,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
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Transcript of Record

UPON PETITION TO REVIEW A DECISION OF THE
TAX COURT OF THE UNITED STATES

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Appearances:

For Taxpayer:

THOMAS R. DEMPSEY
WELLMAN P. THAYER
H. BENJAMIN THOMPSON
WILLIAM L. KUMLER

For Comm'r:

E. A. TONJES
R. C. WHITLEY
FRANK T. HORNER

Docket No. 107125

HELM AND SMITH SYNDICATE,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1941

May 2—Petition received and filed. Taxpayer notified. (Fee paid).

May 2—Copy of petition served on General Counsel.

June 28—Answer filed by General Counsel.

June 28—Request for hearing in Los Angeles, California filed by General Counsel.

1941

- July 8—Notice issued placing proceeding on Los Angeles, California calendar. Answer and request served.
- Dec. 24—Hearing set Feb. 2, 1942—Los Angeles, California.

1942

- Feb. 4—Hearing had before Mr. Sternhagen on merits. Submitted. Stipulation as to the facts filed. Briefs due under the rule.
- Feb. 18—Transcript of hearing Feb. 4, 1942 filed.
- Mar. 20—Motion for extension to Apr. 15, 1942 to file brief, filed by taxpayer.
- Mar. 21—Brief filed by General Counsel.
- Apr. 14—Motion for leave to file the attached brief, filed by taxpayer—Brief lodged.
- Apr. 15—Motion for leave to file the attached brief granted.
- Apr. 16—Copy of motion and brief served on General Counsel.
- June 26—Memorandum opinion rendered. Sternhagen No. 10. Decision will be entered under Rule 50. 6-27-42 copy served.
- July 24—Motion for review of decision of division by the entire Board filed by taxpayer. 7-27-42 Denied.
- July 24—Motion for leave to file brief in support of motion for review by the entire Board, brief lodged, filed by taxpayer.
- July 27—Computation of deficiency filed by General Counsel.
- July 28—Copy of motion and brief served on General Counsel.

1942

July 29—Hearing set August 26, 1942 on settlement. [1*]

Aug. 19—Notice of change of hearing to Sept. 9, 1942.

Sept. 9—Hearing had before Mr. Murdock on settlement under Rule 50. Referred to Mr. Sternhagen.

Sept. 10—Decision entered, Sternhagen, Div. No. 10.

Dec. 7—Petition for review by U. S. Circuit Court of Appeals—9th Circuit, with assignments of error filed by taxpayer.

Dec. 7—Proof of service filed by taxpayer.

Dec. 15—Designation of contents of record filed by taxpayer—with proof of service thereon. [2]

United States Board of Tax Appeals

Docket No. 107125

HELM AND SMITH SYNDICATE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The individuals grouped by the Commissioner for tax assessment purposes and described by him as

*Page numbering appearing at top of page of original certified Transcript of Record.

“Helm and Smith Syndicate” hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols: LA:IT:90D:EIS) dated February 6, 1941, and as a basis of this proceeding allege as follows:

1. The petitioner is an unincorporated group of co-owners who jointly purchased certain marginal lands, as more fully set forth hereinafter, with principal office at 1704 Chester Avenue, Bakersfield, California, c/o M. J. Davis.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit “A”) was mailed to the petitioner on February 6, 1941.

3. The taxes in controversy are income and excess profits taxes for the calendar year ending December 31, 1938, and in the amount of \$8,885.04.

4. The determination of tax set forth in the notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining that the so-called Helm and Smith Syndicate was an association taxable at corporate rates for the calendar year 1938. [3]

(b) The Commissioner erred in failing to determine that the members of the so-called Helm and Smith Syndicate were taxable as partners for the calendar year 1938.

(c) The Commissioner not only erred in determining that the so-called Helm and Smith Syndicate was an association taxable at corporate rates,

but he also erred in determining that the members thereof were engaged in doing business during the calendar year 1938.

(d) The Commissioner erred in determining that the so-called Helm and Smith Syndicate was engaged as a dealer in the purchase and sale of real property and that certain real property sold during the year 1938 constituted a part of its stock in trade.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) On or about January 8, 1937, L. G. Helm entered into two certain agreements with Miller and Lux, Inc., where the said L. G. Helm agreed to purchase 2,427.26 acres of non-contiguous property in Kern County, California. Said property was marginal land which had formerly been devoted solely to stock grazing and to the raising of some grain. Under the provisions of this contract, Mr. Helm was obliged to and did pay down 25% of the purchase price of said land at the time of executing said contract.

(b) Certain of Mr. Helm's friends became interested in the property which he had contracted to purchase and wanted to purchase undivided interests therein. However, said land was non-contiguous and was not capable of equitable division among them. There was among said group, M. J. Davis and George L. Bradford, President and Secretary, respectively, of Bakersfield Abstract Company. Pursuant to the suggestion of the said last named men,

a trust instrument was drafted by Fred E. Borton, another member of the group [4] interested in the purchase of said property, which instrument was designed to convey equal, undivided, one-ninth interests to the parties named therein and to protect the title to said property against the infirmities of death, insolvency and incapacity of the persons therein named. Said instrument, which was executed by L. G. Helm and eight other individuals named therein on June 29, 1937, provided in substance as follows:

(1) It recited that L. G. Helm had contracted for himself and for and in behalf of Lon V. Smith, M. J. Davis, Oscar Rudnick, Morris Laba, George L. Bradford, Morris Himovitz, Max Himovitz and Fred E. Borton to purchase certain specifically described real property. It further provided that each of the above named persons assumed and agreed to pay an equal one-ninth portion of the remaining balance owing on the purchase price of said lands in addition to the amounts theretofore paid by them.

(2) Said instrument further recited that all real property and any interest therein acquired under or by virtue of the contracts between L. G. Helm and Miller and Lux, Inc., was held and would thereafter be held in trust for the benefit of the parties heretofore named in paragraph (1) supra, for the purpose of managing, leasing, selling and otherwise liquidating "said real property".

(3) Said instrument also provided that the trustee was obliged to pay all principal and interest

on the contracts of purchase heretofore mentioned and on any and all encumbrances thereafter placed upon the property acquired pursuant to said contracts, and that in addition to the foregoing he should pay all taxes and assessments. For his services in connection with the duties to be performed by him, the trustee was authorized to retain \$1.00 per annum.

(4) Said trust instrument gave the trustee certain [5] remedies to enforce the collection of obligations assumed by the beneficiaries. It also provided for a certain procedure to be followed in making a collection against a delinquent beneficiary and it authorized the trustee to sell the equity of any delinquent beneficiary for the purpose of applying the proceeds therefrom in payment pro tanto on the obligation owed by said beneficiary.

(5) It was further provided in said instrument that a committee of four named individuals together with the trustee, L. G. Helm, would comprise a managing committee. Said committee was entrusted with the obligation of managing and controlling the trust property.

(6) Said instrument provided that the trustee and the committee members would serve during their lifetimes or until removed by a final order of the court. It also provided that the duration of the trust should be twenty-five years. However, there was a further limitation providing that the holders of two-thirds of the total beneficial interest in the trust could terminate the trust at will by indicating

their consent in writing. Upon such termination the trust instrument provided that the property constituting the corpus of the trust should be conveyed by the trustee to the beneficiaries prorata. In the event that said property was subject to a lease at the time of said distribution, the trust instrument provided that from the date of the termination of said trust the beneficiaries thereof would participate prorata in all future royalties, issues and profits. And lastly, it provided that if the beneficiaries were unable to decide among themselves on an equitable partition of said property, the committee should, in that event, divide said property in equal units for distribution. It was provided that the committee's determination in this regard would be binding on all the parties. [6]

(7) Said trust instrument was executed solely for the purpose of conveying equal, undivided, one-ninth interests to the nine beneficiaries thereof and for the purpose of protecting the title of said property against the infirmities of death, insolvency and incapacity of said co-owners. Said instruments made no provision for the issuance or transfer of certificates of interest nor did it limit or attempt to limit the liability of the beneficiaries. And, no business was conducted by the trustee or any of the beneficiaries under or pursuant to the provision of said instrument during the calendar year 1938.

(8) On or about May 27, 1938, the beneficiaries and the trustee named in the instrument aforesaid mutually agreed to rescind the trust instrument

dated June 29, 1937, whereupon another instrument was drafted and executed under date of May 27, 1938. Therein the beneficiaries and the trustee expressly stated that the instrument of June 29, 1937 had been revoked, rescinded and canceled. Said instrument of revocation also remised, released and forever quit-claimed unto said L. G. Helm all of the rights of the beneficiaries under said declaration of trust and all of the said beneficiaries' interests in and to the lands and premises described in said trust instrument of June 29, 1937. Thereafter said instrument of revocation was duly recorded.

(9) Subsequently, and during the month of May, in the year 1938, L. G. Helm, in his individual capacity, leased the lands and premises purchased from Miller and Lux, Inc. to Pacific Western Oil Company, Standard Oil Company, Union Oil Company, Barnsdall Oil Company and Signal Oil Company, and in consideration therefore he was paid bonuses amounting to \$44,441.25 during the month of May 1938. On or about May 24, 1938, Mr. Helm received \$7,800.00 from Mr. C. E. Houchin in consideration for the [7] sale and conveyance of 240 acres of the property acquired from Miller and Lux, Inc. on January 8, 1937 at a cost of \$15.00 per acre.

(10) After the foregoing transactions had been executed and on or about July 15, 1938, Mr. Helm and the parties who had been beneficiaries under the instrument dated June 29, 1937, executed an instrument entitled "Declaration of Trust." Said

declaration of trust was dated July 15, 1938, and was similar in all respects to the trust instrument dated June 29, 1937, except for the fact that it recited the execution, recordation and revocation of the first of said trust instruments and not only described the trust property according to its legal description but also according to the description of the oil and gas leases which had been executed subsequent to the cancellation of the first trust instrument. The purpose of the parties in executing said trust instrument of July 15, 1938, was the same as the purpose which the parties had when they executed the trust instrument dated June 29, 1937. Said instrument continued in full force and effect throughout the remainder of the calendar year 1938.

(11) The activities of Mr. Helm under the two trust instruments operative during the calendar year 1938 were confined to collecting the rents, issues and profits derived from the trust property, and to distributing same to the beneficiaries named in said trust instruments. Neither he nor the beneficiaries named in the aforesaid trust instruments were engaged in doing business with the trust property during the calendar year 1938 and whatever classification may attach to the so-called, "Helm and Smith Syndicate", none of the participants, individually or collectively, were, with respect to the trust property, engaged in a real estate brokerage business. [8]

(12) No oil wells were drilled on the property

which was conveyed into trust nor were any wells commenced by any of the lessees for exploration or discovery of oil on said land during the calendar year 1938. At no time during the calendar year 1938 were any refining, processing or selling operations incident to the production and sale of oil and gasoline carried on by Mr. Helm or any of the beneficiaries under the two several trust instruments.

(13) For the calendar year 1938 Mr. Helm caused to be filed an income tax return with the Department of Internal Revenue on a partnership form. Said return was filed on the basis of cash receipts and disbursements to conform with the method employed by Mr. Helm in keeping accounts. Said return reported a net taxable income of \$29,-112.23 which was distributed to the respective partners during the calendar year 1938.

(14) Said return also reported the gain realized on the sale of 240 acres to Mr. C. E. Houchin as a capital gain. The Commissioner has erroneously and illegally determined that said gain was ordinary income taxable in full.

(15) On or about October 26, 1940, Mr. L. G. Helm died in the City of Los Angeles. Thereafter and on November 23, 1940, at a meeting of the committee established under the trust instrument dated July 15, 1938, Mr. M. J. Davis was appointed temporary trustee to succeed Mr. Helm deceased.

(16) During the month of April, 1941, a capital stock return for the year ending June 30, 1938 was

filed for and in behalf of the alleged Helm and Smith Syndicate. Said capital stock tax return declared a value of \$300,000.00 for its capital employed in the transactions hereinbefore enumerated and showed a tax of \$300.00 plus interest from August 1, 1938 of [9] \$48.17, which was duly paid to the Collector of Internal Revenue of the Sixth Collection District of California.

Wherefore the petitioner prays that the Board may hear the proceeding and expunge the deficiency proposed by the Commissioner.

THOMAS R. DEMPSEY

WILLIAM P. THAYER

H. BENJAMIN THOMPSON

WILLIAM L. KUMLER

Attorneys for Petitioner,
1104 Pacific Mutual Building,
Los Angeles, California.

(Duly Verified). [10]

EXHIBIT "A"

SN-IT-3

TREASURY DEPARTMENT

Internal Revenue Service

12th Floor,

U. S. Post Office and Court House,

Los Angeles, California

Feb. 6, 1941

Los Angeles Division

LA:IT:90D:EIS

Helm and Smith Syndicate,

c/o L. G. Helm,

1413 Seventeenth Street,

Bakersfield, California.

Sirs:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1938 discloses a deficiency of \$5,223.57 and that the determination of your excess-profits tax liability for the year mentioned discloses a deficiency of \$3,661.47 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By (Signed) GEORGE D. MARTIN

Internal Revenue Agent
in Charge.

Enclosures:

Statement.

Form of waiver.

EIS:fpc [11]

STATEMENT

LA:IT:90D:EIS

Helm and Smith Syndicate,
c/o L. G Helm,
1413 Seventeenth Street,
Bakersfield, California.

TAX LIABILITY FOR THE TAXABLE YEAR ENDED DECEMBER 31, 1938

	Liability	Assessed	Deficiency
Income tax	\$5,223.57	None	\$5,223.57
Excess-profits tax	3,661.47	None	3,661.47
	_____	___	_____
Totals	\$8,885.04	None	\$8,885.04

In making this determination of your income and excess-profits tax liability, careful consideration has been given to the report of examination dated March 22 1940; to your protests dated July 15, 1940 and August 6, 1940; and to the statements made at the conferences held on July 30, 1940, and November 7, 1940.

It is held that your organization is comprehended in the term "corporation" as such term is defined in section 901 of the Revenue Act of 1938. Your tax liability for the taxable year 1938 has been computed accordingly.

A copy of this letter and statement has been mailed to your representative, Mr. H. B. Thompson, 1104 Pacific Mutual Building, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

[12]

Helm and Smith Syndicate.

Statement.

ADJUSTMENT TO NET INCOME

Net income as disclosed by return (Form 1065).....	\$29,112.23
Additional income:	
(a) Gain on sale of assets.....	1,400.00

Net income adjusted.....	\$30,512.23

EXPLANATION OF ADJUSTMENT

(a) You filed a partnership return of income, and included a long-term capital gain of \$2,800.00 on the sale of real estate, which constitutes your stock in trade, such amount representing $66\frac{2}{3}\%$ of the gain of \$4,200.00 realized from such sale. Section 117 of the Revenue Act of 1938 specifically excludes stock in trade or property held primarily for sale to customers; also, the percentage to be taken into account on the sale of capital assets does not apply to corporations.

COMPUTATION OF TAX

Excess-profits Tax:	
Taxable net income.....	\$30,512.23
No capital stock tax return has been filed, or value declared of capital stock.	
Net income subject to excess-profits tax.....	\$30,512.23

Excess-profits tax:	
12% of \$30,512.23.....	\$ 3,661.47
Excess-profits tax assessed.....	None

Deficiency of excess-profits tax.....	\$ 3,661.47
	[13]

Helm and Smith Syndicate. Statement.

Income Tax:	
Taxable net income.....	\$30,512.23
Less: Excess-profits tax paid.....	None

Adjusted net income.....	\$30,512.23
Tax at 19% of \$30,512.23.....	\$5,797.32
Less: 2½% per cent of dividends paid	
credit	573.75

Total income tax.....	\$ 5,223.57
Income tax assessed.....	None

Deficiency of income tax.....	\$ 5,223.57

[Endorsed]: U.S.B.T.A. Filed May 2, 1941. [14]

[Title of Board and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition of the above-named taxpayers, admits and denies as follows:

1. Admits that the petitioner is an unincorporated group, with principal office at 1704 Chester Avenue, Bakersfield, California, c/o M. J. Davis,

and denies the rest of said paragraph 1 of the petition.

2 and 3. Admits the allegations contained in paragraphs 2 and 3 of the petition.

4. (a) to (d), inclusive. Denies all the allegations of error contained in subdivisions (a) to (d), inclusive, of paragraph 4 of the petition.

5. (a), (b)—(1) to (16), inclusive. Denies the allegations contained in subparagraph (a), and subdivisions (1) to (16), inclusive, of subparagraph (b), of paragraph 5 of the petition. [15]

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

(Signed) J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

Division Counsel.

FRANK T. HORNER,

E. A. TONJES,

Special Attorneys, Bureau of

Internal Revenue.

Received June 28, 1941. U. S. Board of Tax Appeals.

[Endorsed]: U.S.B.T.A. Filed June 28, 1941.

[16]

[Title of Board and Cause.]

William L. Kumler, Esq., for the petitioner.

E. A. Tonjes, Esq., for the respondent.

MEMORANDUM OPINION

Sternhagen: 1. The Commissioner determined a deficiency for 1938 of \$5,223.57 income tax and \$3,661.47 excess-profits tax. The petitioner, having filed a partnership return in Los Angeles, assails the determination (1) that it is "comprehended in the term 'corporation' as such term is defined in section 901 of the Revenue Act of 1938;" (2) that the gain in the sale of a piece of land was an ordinary gain; and (3) of the valuation of capital stock used in the computation of excess-profits tax.

All the facts are stipulated. The petitioner is a group of individuals who contributed equally in the purchase of a tract of about 2500 acres in the San Joaquin Valley, believing that it might contain oil. One of their number, Helm, contracted to buy the property and was given wide power and authority to handle it to their common advantage. He rented it for sheep grazing. In 1937 a writing was drawn and signed by all the participating owners in the form of a twenty-five year trust instrument, designating Helm as trustee and all the participants as beneficiaries. Helm was given power to manage and control the property, "sell, convey, lease, including oil and gas leases," pay the purchase price, taxes, and expenses, collect proportionately from the participants, and distribute income and profits. Upon

default of any participant, his interest could be sold, and the assignee would assume the obligations. In case of vacancy in the trusteeship, the participants could elect a successor. Helm made an agricultural lease of part of the property. In May 1938, he made six oil leases, each for cash and royalties. For convenience in title insurance the trust instrument was revoked in May 1938, and the participants recorded a release and quitclaim to Helm of their rights in the land. 412 acres were sold in July. The amounts received by Helm from the grantee and from the several oil lessees were deposited with the escrow agent for the original grantor, and the deed for the 2,500 acres was received by Helm and title was held in his name. A second trust instrument was executed in July 1938, substantially restating the terms of the earlier instrument which had been revoked. One of the participants sold one-fourth of his interest to each of two new persons and their proportionate interests were then recognized. In the taxable year Helm distributed the net gains and income among the participants proportionately. No explorations have been made or wells drilled upon the property.

Although, like *Thrash Lease Trust v. Commissioner*, 99 Fed. (2d) 925, certiorari denied 306 U. S. 654, this is a border line case, the organization is more like the taxpayer in that case than the syndicate in *Commissioner v. [17] Gerstle*, 95 Fed. (2d) 587, or in *Commissioner v. Rector & Davidson*, 111 Fed. (2d) 332, certiorari denied 311 U. S. 672, upon

which petitioner principally relies. A connotative definition of the statutory term "association" has never been available and, since *Morrissey v. Commissioner*, 96 U. S. 344, it has been recognized that the outline is not clear. The petitioner is a group collectively engaged in a business enterprise conducted by a central management and control. Title to the property is in one name. Participating interests are divisible and assignable. The enterprise is not like a joint venture for the single purchase and sale of a piece of real estate but is a long time business, expected to yield regular income from oil leases and requiring payment of and participation in expenses of operation.

The Commissioner's determination that petitioner is an association taxable as a corporation is sustained.

2. It is unnecessary to consider whether the gain from the sale of 412 acres in July was an ordinary capital gain, since section 117 (b) is not applicable to corporations.

3. The Commissioner refused to recognize the capital stock value declared by the petitioner in an untimely capital stock tax return filed April 26, 1941. Respondent, in his brief, makes no point of the tardiness of the filing, and at the hearing suggested no distinction from *Del Mar Addition v. Commissioner*, 113 Fed (2d) 410. We see no distinction, and upon the authority of that decision and *Huron River Syndicate*, 44 B. T. A. 859, we

hold that the value declared in the late return is properly to be used.

Decision will be entered until Rule 50.

Entered: June 26, 1942.

[Board of Tax Appeals Seal] [18]

United States Board of Tax Appeals
Washington

Docket No. 107125

HELM AND SMITH SYNDICATE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Subsequent to the Board's Memorandum Opinion, entered June 26, 1942, the respondent filed a computation which came on for hearing on September 9, 1942. No objection to the said computation having been filed, it is

Ordered and Decided that for 1938 there are deficiencies of \$5,223.57 in income tax and \$30.73 in excess-profits tax.

Entered Sep. 10, 1942.

(Signed) J. M. STERNHAGEN

[Seal]

Member [19]

[Title of Board and Cause.]

STIPULATION OF FACTS

It Is Stipulated and Agreed by and between the parties to the above entitled proceeding through their respective counsel that the following facts may be received by the Board with the same force and effect as though they had been submitted and received in open hearing.

I.

During the taxable year ending December 31, 1938, "Helm and Smith Syndicate," under which name this proceeding is brought, was an unincorporated group of individuals, to wit: L. G. Helm, Lon V. Smith, Oscar Rudnick, George L. Bradford, Fred E. Borton, Marvin J. Davis, Morris Laba, Morris Himovitz and Max Himovitz, all residents of Bakersfield, California.

II.

Respondent having examined the manner in which said individuals held their interests in certain real property and the manner in which they transacted business with respect thereto during the calendar year 1938 has determined that said group of individuals was an association taxable at corporate rates within the purview of Section 901 of the Revenue Act of 1938. [20]

III.

Sometime in 1936, L. G. Helm obtained information that 2427.26 acres of land located in the San

Joaquin Valley of California could be purchased for \$15.00 per acre. Believing that the property had possibilities for producing oil, Helm made a deposit with the owner, Miller and Lux, Inc., and obtained the right to acquire the property at the agreed price of \$15.00 per acre.

IV.

Thereafter, and during January, 1937, Helm contacted the eight persons in addition to himself specifically named in paragraph I hereof, and obtained from each the sum of approximately \$1,000.00 with the understanding that said sums together with an equal amount to be furnished by Helm was to be used to acquire the above described property at \$15.00 per acre.

V.

Mr. Helm thereupon requested Miller and Lux, Inc. to prepare its usual form of conditional sales contract covering the sale of the 2427.26 acres of land in accordance with its usual terms of 25% of the purchase price down and 10% of the balance of the purchase price to be paid annually with interest at 6% per annum. Mr. Helm's request was accompanied by the required down payment of 25% of the purchase price made with monies contributed by Mr. Helm, and the other eight individuals named above and conditional sales contracts with Miller and Lux, Inc. were thereafter prepared and executed by and between Miller and Lux, Inc. and

L. G. Helm as requested. These contracts are attached hereto and designated Exhibits 1 and 2. In purchasing the property from Miller and Lux, Inc. Mr. Helm did not disclose to the seller the fact that the eight other named individuals had purchased interests in the property, but took title in his name only. [21]

VI.

Mr. Helm issued no receipts for the money furnished by the eight other co-purchasers of the land, nor was any formal or written agreement prepared or executed specifying the interests of the nine above-named persons in the venture. It was understood, however, between all of the nine co-purchasers of the land that each party was acquiring an undivided one-ninth interest in the property and that Mr. Helm would handle the property as he might see fit to the common advantage and profit of all.

VII.

Thereafter and during the year 1937 Mr. Helm following the general practice of Miller and Lux, the preceding owner and of other land owners in the area, executed leases of the property for sheep raising in his own name receiving a rental of 25c per acre which he accounted for to the other owners in accordance with their respective interests.

VIII.

Because there was no instrument in writing defining the interests owned by the eight undisclosed co-purchasers, George L. Bradford and Marvin J.

Davis, officers of the Bakersfield Abstract Company, two of said eight undisclosed co-purchasers, felt that some documentary evidence should be prepared and should be in the possession of each of the interest holders to evidence their interest in the venture. George L. Bradford thereupon prepared a declaration of trust, forwarding the same to Fred E. Borton, an attorney and one of the eight undisclosed co-purchasers, for approval. This trust agreement was duly entered into by all of the nine named co-purchasers under date of June 29, 1937. The said trust agreement is attached hereto and designated Exhibit 3. [22]

IX.

Thereafter Lewis Brothers, agriculturalists, called at the office of Mr. Helm and stated that due to the surplus water being wasted from the Buena Vista Lake there would be an opportunity to dry farm certain portions of the said land. Lewis Brothers offered to lease portions of said land for agricultural purposes, to plant crops, and to harvest the same paying to the landowner a one-fifth crop share without expense to the landowner. Mr. Helm thereafter, in his own name, leased the land to Lewis Brothers for such purposes, later accounting to the other eight interest holders for the proceeds from the one-fifth crop share of the landowner.

X.

On or about January 6, 1938, Mr. Helm called upon the other eight interest holders to contribute

their prorata shares of the principal and interest installment due upon the conditional sales contracts with Miller and Lux, Inc. upon January 8th of each year, which they did.

XI.

In the early part of 1938 several new oil fields were discovered in Kern County and Mr. Helm entered into negotiations with various oil companies for the purpose of leasing certain portions of the aforesaid property to said oil companies for the production of oil and gas from the property, if it should be found to exist thereon. As a result of these negotiations, Mr. Helm succeeded in consummating the following agreements with the following oil companies:

(a) On or about May 18, 1938, an indenture was executed by and between L. G. Helm and Etta Helm, his wife, as "grantor" and the Standard Oil Company of California as "grantee", which indenture is attached hereto and designated Exhibit 4.

[23]

(b) On or about the 19th day of May, 1938, L. G. Helm and Etta Helm, his wife, leased to the Barnsdall Oil Company certain described land, under a leasing agreement which is attached hereto and designated as Exhibit 5.

(c) On or about the 20th day of May, 1938, L. G. Helm and Etta Helm, his wife, leased to the Pacific Western Oil Corporation certain described land, under a leasing agreement which is attached hereto and is designated as Exhibit 6.

(d) On or about the 21st day of May, 1938, L. G. Helm and Etta Helm, his wife, leased to the Signal Oil and Gas Company certain described land under a leasing agreement which is attached hereto and designated Exhibit 7.

(e) On or about the 24th day of May, 1938, L. G. Helm and Etta Helm, his wife, leased to the Union Oil Company two separate parcels of land under two leasing agreements which are attached hereto and designated Exhibits 8 and 9.

XII.

The grants and the leases of the land described as Exhibits 4 to 9, inclusive, as aforesaid, were actually executed by and between L. G. Helm and his wife individually as lessors and grantors and the said oil companies as lessees and grantees and deposited in escrow with the Bakersfield Abstract Company. It was then found that the trust declaration hereinabove described as Exhibit 3 had been filed for record and that L. G. Helm held the title to the property as a trustee for himself and the eight other beneficiaries named in that trust declaration. For the purpose of consummating the leasing agreements and of allowing the title insurance policies to be issued without Mr. Helm's being required to perform the usual formalities required of a trustee, the trust declaration was revoked under date of [24] May 24, 1938, by an instrument of revocation which is attached hereto and designated Exhibit 10. Under the terms of

said instrument of revocation all the members of the syndicate, released and quit-claimed to L. G. Helm all their rights and interests in and to the property under the declaration of trust of June 29, 1937, described as Exhibit 3 herein.

XIII.

At about the same time Mr. Helm was negotiating the aforesaid leases with the various oil companies and due to the fact that said oil companies were leasing portions of the land, one C. E. Houchin, expressed a desire to purchase and did purchase some 412.53 acres of the land. This sale was consummated by two grant deeds whereby L. G. Helm and Etta Helm, his wife, granted to C. E. Houchin certain described land then owned by the syndicate. Only that portion of the land sold to C. E. Houchin which had been held by the syndicate for over eighteen months is in controversy in the present proceeding. Said portion of land, comprising some 240 acres and having a cost basis of \$3600.00, was sold by Mr. Helm to Mr. Houchin for \$7800.00 by deed dated July 1, 1938, which deed is attached hereto and designated Exhibit 11.

XIV.

The consideration paid by the grantees and lessees of the land as set forth above was deposited in escrow by Mr. Helm under instructions to the escrow agent to procure from Miller and Lux, Inc., a deed conveying to him all of the 2427.26 acres of land sold to him by Miller and Lux, Inc., under the

conditional sales contracts (Exhibits 1 and 2) and to pay from the monies so deposited in escrow, all sums due Miller and Lux, Inc. under the conditional sales contracts. The escrow agent performed all these steps. [25]

XV.

Thereafter and under date of July 15, 1938, a second trust declaration, attached hereto and designated Exhibit 12, was executed by all the beneficiaries in order to establish as of record their interests in and to the land then held in the name of Mr. Helm, subject to the leases which he had executed with the various oil companies.

XVI.

Mr. Helm thereupon distributed to each of the interest holders his prorata share of the excess monies coming into his hands over and above the amount which he had used to defray incidental expenses and to pay off the balance of the purchase price of the land originally purchased from Miller and Lux, Inc. under the conditional sales contracts (Exhibits 1 and 2).

XVII.

Due to the fact that Mr. Helm and Mr. Smith had devoted considerable time and effort to negotiating and consummating these transactions the beneficiaries allowed each of them a \$500.00 commission for their services, payable out of the funds held by Mr. Helm.

XVIII.

All of the aforesaid oil leases executed by Mr. Helm on behalf of the nine beneficiaries were long term leases providing for the payment to the landowner of a one-eighth royalty in the event of the discovery of oil and gas in commercial quantities. No exploratory wells have ever been drilled either on the property leased as aforesaid or upon adjacent lands and no royalties or rentals have ever been paid under the provisions of any of said oil and gas leases nor has any attempt been made to explore for oil or develop the land for oil or gas production. The only proceeds received [26] by Mr. Helm, or by any other co-owner from said leases were the original bonuses paid by each of said oil companies in 1938. Since the second declaration of trust (Exhibit 12) the trustee of the property has had no duties other than collecting the annual sheep feed rentals and crop shares and paying the current taxes. Except for the commissions allowed Messrs. L. G. Helm and Lon V. Smith, administrative expenses of the syndicate for the calendar year 1938 were:

Recording fees and stenographer	\$ 50.62
Office rent charges made by L. G.	
Helm for use of his office	25.00
Grain insurance	8.48
Escrow fees	10.30
Commission to J. Lee Cross	200.00
	<hr/>
	\$294.40

XIX.

Although the trust declarations each provided for a committee of the beneficiaries which was to meet and consult with the trustee, during the year 1938, Mr. Helm handled all matters pertaining to this property according to his best judgment, at times discussing actions he had taken with such members as he might come in contact. Many of the transactions handled by Mr. Helm were performed without first having obtained any definite approval from the beneficiaries, which procedure was in harmony with the original understanding of all parties that Mr. Helm was to do anything necessary and to take care of any matters that might arise relative to the property.

XX.

No office was maintained for the purpose of conducting any business relating to the property and all matters in connection therewith were handled by Mr. Helm in his personal office in the El Cajon Building, Bakersfield, California, or at such other places as suited Mr. Helm's convenience. The [27] only records kept for the syndicate were entries in Mr. Helm's cash book which contained entries relating to interests other than those of these co-owners and from which the accountings to the other eight beneficiaries and the federal partnership information return (form 1065) for the year 1938 were made, a copy of which is attached and marked Exhibit 13. Such records as were maintained were sufficient to enable Mr. Helm to ascertain how much

of the receipts from the property were to be distributed to the several beneficiaries in accordance with their respective interests.

XXI.

On or about April 26, 1941, a capital stock tax return was filed with the Collector of Internal Revenue for the Sixth California Collection District at Los Angeles, California, under the name of Helm and Smith Syndicate for the year ended June 30, 1938, a copy of which is attached hereto and designated Exhibit 14. Capital stock taxes in the amount of \$300.00 plus interest thereon in the amount of \$48.17 were paid on April 28, 1941, and, a penalty in the amount of \$75.00 and interest thereon of \$1.11 were paid on June 10, 1941.

WILLIAM G. KUMLER

Counsel for Petitioner,

1104 Pacific Mutual Building,
Los Angeles, California

(Signed) J. P. WENCHEL

Counsel for Respondent

[Endorsed]: U.S.B.T.A. Filed Feb. 4, 1942. [28]

EXHIBIT No. 1

(Copy)

No. C-149

Agreement

Noted on Plat

MILLER & LUX

Incorporated

A Corporation

With

L. G. Helm

Bakersfield, California

CONTRACT FOR SALE OF LAND

Dated: January 8, 1937

This Agreement, made this 8th day of January, 1937, between Miller & Lux Incorporated (a corporation), hereinafter called the seller, and L. G. Helm of El Tejon Hotel Bldg., Bakersfield, California, hereinafter called the purchaser.

Witnesseth:

1. In consideration of the covenants and agreements herein contained and the payments to be made, as herein specified, the seller agrees to sell and the purchaser agrees to buy all the following described real property situate in the County of Kings, State of California, to-wit:

Township 24 South, Range 21 East, M. D. B. & M.:

East half of southeast quarter of Section 25;

Southeast quarter of Section 36;

Total acreage—240.00 acres, more or less.

Reserving road easements over and upon a strip of land thirty feet in width along the east and south lines of Section 25 and Section 36 and within above-described tracts of land for use as public roads.

Township 24 South, Range 22 East, M. D. B. & M.:

North half, and the east half of southwest quarter of Section 30, containing 434.68 acres, more or less.

Reserving road easements over and upon a strip of land thirty feet in width along the north, east, west and south lines of said Section 30, and within above-described tract of land for use as public roads.

2. Said purchaser promises and agrees to pay for said land the sum of Ten thousand one hundred twenty and 20/100 Dollars (\$10,120.20), in lawful money of the United States, as follows, to-wit: Two thousand five hundred thirty and 20/100 Dollars (\$2,530.20), upon the execution of this agreement, and the balance in ten (10) equal installments of Seven hundred fifty-nine Dollars (\$759.00) each, payable on the 8th day of January of each year beginning January 8th, 1938, and until said purchase price is fully paid. [29] Deferred payments shall bear interest payable semi-annually at six per cent per annum from the date hereof until the said deferred payments are made. All payments shall be made to the seller at its office in the City and County of San Francisco, State of California, and not elsewhere, nor to any other person, nor to any selling agent of said seller. The purchaser may, if

he so desire, pay all or any of said installments prior to the time fixed in this contract and interest thereon shall cease from the time of such payment.

3. The following property and property rights are excepted and reserved, to-wit:

(a) Rights of way for all presently existing roads, telephone, telegraph and electric power and pipe lines, sewers, drainage ditches, canals and other reclamation and irrigation works, and the easement to maintain, operate and repair the same;

(b) The easement to enter and construct, maintain, operate and repair additional roads, ditches, canals, laterals and other irrigation works and drainage ditches over and across any of said land along lines of location substantially coincident with the boundaries of said land. The seller agrees to pay said purchaser for the land so taken by it hereafter for such purposes at the time of such taking a sum equal to the amount paid by the purchaser to the seller for the land so taken.

(c) The right of ingress to and egress from the land herein described for said purposes, and the right to take and use with the minimum of damage to the said land such earth and materials as may be actually necessary to construct, maintain and repair that portion of said works, if any, situate on said premises.

4. The above described land is sold subject to any lease or farming contract now existing in respect to the same.

5. Upon the execution of this agreement and the

making of the initial payment the purchaser shall have the right to take possession of said land and thereafter continue in possession so long as he shall not be in default hereunder.

6. The seller shall pay the taxes on said property for the portion of the fiscal year up to the date of this agreement, and the purchaser shall pay the taxes for the balance of this fiscal year. All taxes and all assessments hereafter levied or becoming due upon said land by any irrigation, reclamation, drainage, water storage, or any other district or public corporation, shall be paid by the purchaser. The seller may pay the said taxes or assessments and the insurance, if hereinafter provided for, on behalf of the purchaser, and the same shall become immediately due from the purchaser to the seller, together with interest at the rate of six (6) per cent per annum from the date of payment by the seller until repaid, and said seller shall have a lien upon any interest of said purchaser in said land for the money paid by it for said insurance, taxes or assessments, together with said interest thereon.

7. Time is of the essence of this agreement and of each and every of the terms, provisions, conditions and stipulations hereof, and the waiver by the seller of any breach of this agreement shall not be held or deemed to be a waiver of the terms of this contract requiring performance of other covenants or terms, nor of the provisions hereof making time of the essence hereof as to other payments thereafter falling due.

8. After full and specific performance by the purchaser of all of his obligations hereunder, the seller shall on written demand cause to be executed and delivered to the purchaser a good and sufficient deed conveying to him the above described premises and appurtenances free and clear of all encumbrances done or suffered by the seller, excepting all taxes, assessments, charges and interest herein required to be paid by the purchaser, said deed shall be in the usual form of deeds of grants and shall contain and provide for all reservations, exceptions, restrictions, conditions and limitations herein mentioned.

9. It is expressly understood that if the purchaser shall not keep or perform all the covenants or conditions herein contained on his part to be kept or performed, or shall fail for a period of thirty (30) days after any sum herein required to be paid by him becomes due and payable to pay the same, that the seller, at its option, shall be released from all obligations at law or in equity, to convey the said land, and all rights and interests of the purchaser under the agreement shall cease and terminate, and the seller shall have the right to immediate possession of the said land, and all improvements thereon, and the purchaser shall forthwith redeliver possession of the said land to the seller, and all moneys theretofore paid by the purchaser under the agreement, together with all improvements placed on the land, shall be retained by the seller as liquidated and agreed damages for

such default, or on said default, the seller, at its option, may declare by notice to the purchaser the entire unpaid balance of the said purchase price to be due and payable, and may proceed, by appropriate action at law or suit in equity, to enforce payment hereof, in which action or suit, seller shall be entitled to recover reasonable attorney fees.

In the event the purchaser shall be in default hereunder, no offer of performance nor tender of deed need be made by the seller, and no notice to quit need be served, said offer, tender and notice being expressly waived by the purchaser.

10. ~~It is further understood that all water rights, whether riparian, appropriative or prescriptive and including the right to receive water pursuant to the terms of the Miller-Haggin Agreement of July 28, 1888, are expressly excepted and reserved from this sale. The purchaser waives any right to object to and hereby consents to the storage and or impounding of the waters of Kern River and its tributaries, without limit, by the Buena Vista Water Storage District, and or the seller and its assigns, and the purchaser also consents to said District and or the seller and its assigns diverting the waters of said river to riparian and non-riparian lands within or without the watershed of said river. Said right of storage and said right to divert the waters of said river shall be considered as an easement in and shall bind said land, regardless of ownership thereof.~~

11. No alteration of the terms of this contract shall be valid or binding upon the seller without the written consent of its President or Vice-President.

12. It is understood by the purchaser that all of the above described land is subject to a deed of trust to Bank of California, National Association, as trustee, and it is understood and agreed that the seller is to secure and deliver to the purchaser a full and sufficient deed of reconveyance from the said trustee upon completion of all the payments herein provided for.

13. It is expressly understood and agreed that the above described land is purchased by the purchaser without any representations by the seller or its agent as to the character, fertility or productiveness of the said land, and without any other representations or guaranties of any kind, and that this agreement contains all of the agreements of the parties hereto.

14. In case the said land is part of a larger tract of land belonging to the seller, and the sale thereof shall separate the balance of the land owned by the seller from any stream or watercourse, such separation shall in no way affect the riparian rights of the land so retained by the seller, but such riparian rights shall be preserved and be unaffected by such sale.

15. Any loss by fire or otherwise shall not affect the obligation of the seller to convey nor of the purchaser to take said property according to the terms of this agreement.

16. The purchaser hereby further agrees not to remove, or permit to be removed from the said land, any improvements, whether placed thereon by the

purchaser or by others, and agrees to keep and maintain said improvements in good condition and repair, and to use all reasonable efforts to keep the said land free from squirrels and noxious weeds and grasses, and to cultivate and properly care for the said land in a good and farmer-like manner. [30]

17. Seller may continue, renew or place new insurance on any improvements on the above described land. Prepaid premiums shall be pro-rated as of the date of this agreement, and all premiums on said insurance hereafter becoming due shall be paid by the purchaser. In the event of loss, any insurance recovered shall, at the option of the purchaser, be applied toward the repair or replacement of insured premises, and if not so used, then the same shall be applied toward the payment of any balance due under this agreement, and the surplus, if any, shall be paid to the purchaser.

17a. It is further understood that this sale is made subject to a Grazing Lease, No. 1730, entered into by Seller with C. E. Houchin of Bakersfield, California, dated January 1, 1937, and that Purchaser is not to have possession of the above-described property until the expiration of said Grazing Lease on December 31, 1937. The Purchaser shall be entitled to a pro-rata of the rental of the property in this sale for the period from January 8 to December 31, 1937.

18. Neither this contract nor any interest therein shall be assignable without the written consent of the seller.

19. It is understood and agreed that the stipulations of this agreement are to apply to and bind the heirs, executors and administrators, successors and assigns of the respective parties hereto, except as otherwise herein provided.

20. The word "purchaser," whenever used in this instrument, shall be construed to include the plural as well as the singular number and that the use of the masculine gender in this instrument shall be construed to include the feminine and neuter genders.

In Witness Whereof, the parties hereto have executed this agreement in triplicate the day and year first above written.

[Seal]

MILLER & LUX INCORPORATED

By (Illegible)

Vice President

By W. S. MITCHELL

Assistant Secretary

L. G. HELM

Purchaser

.....

Purchaser

Approved: W. S. M.

Form Approved:, Attorney.

Description Approved: I.C.C., Engineer.

Compared.....to.....

Full name of wife of purchaser: Etta Helm.

Address of Purchaser: 1413-17th Bakersfield.

Calif. (Must be inserted.) [31]

Assignment

For value received, the above named purchaser hereby assigns and grants unto.....
of....., California,
 all of his right, title, interest, claim and demand in and to the foregoing agreement, including the right to demand and receive the deed therein mentioned. This assignment is subject to the approval of Miller & Lux Incorporated.

.....
 Purchaser.

.....
 Purchaser.

I hereby accept the assignment of the foregoing agreement and assume and promise to keep and perform all of the covenants and agreements thereof as therein required.

.....
 Assignee.

The foregoing assignment and acceptance is hereby approved.

Dated thisday of....., 19....

MILLER & LUX, INCORPORATED,

By

I consent to the above assignment.

.....
 Wife of Purchaser.

PAYMENTS—(Ruled form not filled it.) [32]

EXHIBIT No. 2

(Copy)

No. C-148

Agreement

Noted on Plat

Miller & Lux

Incorporated

A Corporation

With

L. G. Helm

Bakersfield, California

CONTRACT FOR SALE OF LAND

Dated: January 8, 1937.

This Agreement, made this 8th day of January, 1937, between Miller & Lux Incorporated (a corporation), hereinafter called the seller, and L. G. Helm of El Tejon Hotel Bldg., Bakersfield, California, hereinafter called the purchaser.

Witnesseth:

1. In consideration of the covenants and agreements herein contained and the payments to be made, as herein specified, the seller agrees to sell and the purchaser agrees to buy all the following described real property situate in the Counties of Kern & Kings, State of California, to wit:

Township 24 South, Range 22 East, M. D. B. & M.:

South half of north half of Section 29;

Southwest quarter, south half of northwest quar-

ter and west half of northeast quarter of Section 32;

West half of Section 33;

West half of Section 34;

Total acreage—1,120 acres, more or less.

Reserving road easements over and upon a strip of land thirty feet in width along the east and west lines of Section 29, along the north, west and south lines of Section 32, along the north, west, and south lines of Sections 33 and 34, and within above-described tracts of land for use as public roads.

Township 25 South, Range 21 East, M. D. B. & M.:

A portion of the north half of Section 1, Township 25 South, Range 21 East M. D. B. & M., being more particularly described as follows: Beginning at a point on the east line of Section 1, Township 25 South, Range 21 East, M. D. B. & M., which bears South $0^{\circ} 09'$ West 1322.65 feet from the northeast corner of said Section 1, thence along east line of Section 1, South $0^{\circ} 09'$ West 1322.65 feet to the east quarter section corner of Section 1, thence along the east and west quarter section line of Section 1, North $89^{\circ} 58'$ west 3052.10 feet, thence along the east line of a one hundred and forty acre tract of land conveyed by Miller & Lux Incorporated to G. Henshaw by deed dated February 24, 1936, North $0^{\circ} 20\frac{3}{4}'$ East 1322.55 feet, thence South $89^{\circ} 58'$ East 3048.05 feet to the point of beginning, containing 92.53 acres, more or less. Reserving a road easement over and upon a strip of land thirty feet in width along the east line of said Section 1 and within

above-described tract of land for use as a public road.

East half of southwest quarter, and the southwest quarter of southwest quarter of Section 1, containing 122.28 acres, more or less. Reserving road easements over and upon a strip of land thirty feet in width along the west and south lines of said Section 1 and within above-described tracts of land for use as public roads.

Township 25 South, Range 22 East, M. D. B. & M.:

North half of northwest quarter of Section 3;

Northeast quarter and north half of southeast quarter of Section 4;

All of the north half of north half, except the northeast quarter of northeast quarter, and the east 29.69 acres of the northwest quarter of the northeast quarter; Section 6;

Total acreage—417.77 acres, more or less.

Reserving road easements over and upon a strip of land thirty feet in width along the west and north lines of Section 6, along the north and east lines of Section 4, and along the north and west lines of Section 3 and within above-described tracts of land for use as public roads.

2. Said purchaser promises and agrees to pay for said land the sum of Twenty-six thousand two hundred eighty-eight and 70/100 Dollars (\$26,288.70), in lawful money of the United States, as follows, to wit: Six thousand five hundred seventy-two and 20/100 Dollars (\$6,572.20), upon the execution of this agreement, and the balance in ten

(10) equal installments of One thousand nine hundred seventy-one and 65/100 Dollars (\$1,971.65) each, payable on the 8th day of January of each year beginning January 8th, 1938, and until said purchase price is fully paid. [33] Deferred payments shall bear interest payable semi-annually at six per cent per annum from the date hereof until the said deferred payments are made. All payments shall be made to the seller at its office in the City and County of San Francisco, State of California, and not elsewhere, nor to any other person, nor to any selling agent of said seller. The purchaser may, if he so desire, pay all or any of said installments prior to the time fixed in this contract and interest thereon shall cease from the time of such payment.

3. The following property and property rights are excepted and reserved, to-wit:

(a) Rights of way for all presently existing roads, telephone, telegraph and electric power and pipe lines, sewers, drainage ditches, canals and other reclamation and irrigation works, and the easement to maintain, operate and repair the same;

(b) The easement to enter and construct, maintain, operate and repair additional roads, ditches, canals, laterals and other irrigation works and drainage ditches over and across any of said land along lines of location substantially coincident with the boundaries of said land. The seller agrees to pay said purchaser for the land so taken by it hereafter for such purposes at the time of such taking

a sum equal to the amount paid by the purchaser to the seller for the land so taken.

(c) The right of ingress to and egress from the land herein described for said purposes, and the right to take and use with the minimum of damage to the said land such earth and materials as may be actually necessary to construct, maintain and repair that portion of said works, if any, situate on said premises.

4. The above described land is sold subject to any lease or farming contract now existing in respect to the same.

5. Upon the execution of this agreement and the making of the initial payment the purchaser shall have the right to take possession of said land and thereafter continue in possession so long as he shall not be in default hereunder.

6. The seller shall pay the taxes on said property for the portion of the fiscal year up to the date of this agreement, and the purchaser shall pay the taxes for the balance of this fiscal year. All taxes and all assessments hereafter levied or becoming due upon said land by any irrigation, reclamation, drainage, water storage, or any other district or public corporation, shall be paid by the purchaser. The seller may pay the said taxes or assessments and the insurance, if hereinafter provided for, on behalf of the purchaser, and the same shall become immediately due from the purchaser to the seller, together with interest at the rate of six (6) per cent per annum from the date of payment by the seller

until repaid, and said seller shall have a lien upon any interest of said purchaser in said land for the money paid by it for said insurance, taxes or assessments, together with said interest thereon.

7. Time is of the essence of this agreement and of each and every of the terms, provisions, conditions and stipulations hereof, and the waiver by the seller of any breach of this agreement shall not be held or deemed to be a waiver of the terms of this contract requiring performance of other covenants or terms, nor of the provisions hereof making time of the essence hereof as to other payments thereafter falling due.

8. After full and specific performance by the purchaser of all of his obligations hereunder, the seller shall on written demand cause to be executed and delivered to the purchaser a good and sufficient deed conveying to him the above described premises and appurtenances free and clear of all encumbrances done or suffered by the seller, excepting all taxes, assessments, charges and interest herein required to be paid by the purchaser, said deed shall be in the usual form of deeds of grants and shall contain and provide for all reservations, exceptions, restrictions, conditions and limitations herein mentioned.

9. It is expressly understood that if the purchaser shall not keep or perform all the covenants or conditions herein contained on his part to be kept or performed, or shall fail for a period of thirty (30) days after any sum herein required to

be paid by him becomes due and payable to pay the same, that the seller, at its option, shall be released from all obligations at law or in equity, to convey the said land, and all rights and interests of the purchaser under the agreement shall cease and terminate, and the seller shall have the right to immediate possession of the said land, and all improvements thereon, and the purchaser shall forthwith redeliver possession of the said land to the seller, and all moneys theretofore paid by the purchaser under this agreement, together with all improvements placed on the land, shall be retained by the seller as liquidated and agreed damages for such default, or on said default, the seller, at its option, may declare by notice to the purchaser the entire unpaid balance of the said purchase price to be due and payable, and may proceed, by appropriate action at law or suit in equity, to enforce payment hereof, in which action or suit, seller shall be entitled to recover reasonable attorney fees.

In the event the purchaser shall be in default hereunder, no offer of performance nor tender of deed need be made by the seller, and no notice to quit need be served, said offer, tender and notice being expressly waived by the purchaser.

10. It is further understood that all water rights, whether riparian, appropriative or prescriptive and including the right to receive water pursuant to the terms of the Miller-Haggin Agreement of July 28, 1888, are expressly excepted and reserved from this sale. The purchaser waives any right to object to

and hereby consents to the storage and or impounding of the waters of Kern River and its tributaries, without limit, by the Buena Vista Water Storage District, and or the seller and its assigns, and the purchaser also consents to said District and or the seller and its assigns diverting the waters of said river to riparian and non-riparian lands within or without the watershed of said river. Said right of storage and said right to divert the waters of said river shall be considered as an easement in and shall bind said land, regardless of ownership thereof.

11. No alteration of the terms of this contract shall be valid or binding upon the seller without the written consent of its President or Vice-President.

12. It is understood by the purchaser that all of the above described land is subject to a deed of trust to Bank of California, National Association, as trustee, and it is understood and agreed that the seller is to secure and deliver to the purchaser a full and sufficient deed of reconveyance from the said trustee upon completion of all the payments herein provided for.

13. It is expressly understood and agreed that the above described land is purchased by the purchaser without any representations by the seller or its agents as to the character, fertility or productiveness of the said land, and without any other representations or guaranties of any kind, and that this agreement contains all of the agreements of the parties hereto.

14. In case the said land is part of a larger tract

of land belonging to the seller, and the sale thereof shall separate the balance of the land owned by the seller from any stream or watercourse, such separation shall in no way affect the riparian rights of the land so retained by the seller, but such riparian rights shall be preserved and be unaffected by such sale.

15. Any loss by fire or otherwise shall not affect the obligation of the seller to convey nor of the purchaser to take said property according to the terms of this agreement.

16. The purchaser hereby further agrees not to remove, or permit to be removed from the said land, any improvements, whether placed thereon by the purchaser or by others, and agrees to keep and maintain said improvements in good condition and repair, and to use all reasonable efforts to keep the said land free from squirrels and noxious weeds and grasses, and to cultivate and properly care for the said land in a good and farmer-like manner. [34]

17. Seller may continue, renew or place new insurance on any improvements on the above described land. Prepaid premiums shall be pro-rated as of the date of this agreement, and all premiums on said insurance hereafter becoming due shall be paid by the purchaser. In the event of loss, any insurance recovered shall, at the option of the purchaser, be applied toward the repair or replacement of insured premises, and if not so used, then the same shall be applied toward the payment of any balance due under this agreement, and the surplus, if any, shall be paid to the purchaser.

17a. It is further understood that this sale is made subject to a Grazing Lease, No. 1730, entered into by Seller with C. E. Houchin of Bakersfield, California, dated January 1, 1937, and that Purchaser is not to have possession of the above-described property until the expiration of said Grazing Lease on December 31, 1937. The Purchaser shall be entitled to a pro-rata of the rental of the property in this sale for the period from January 8 to December 31, 1937.

18. Neither this contract nor any interest therein shall be assignable without the written consent of the seller.

19. It is understood and agreed that the stipulations of this agreement are to apply to and bind the heirs, executors and administrators, successors and assigns of the respective parties hereto, except as otherwise herein provided.

20. The word "purchaser," whenever used in this instrument, shall be construed to include the plural as well as the singular number and that the use of the masculine gender in this instrument shall be construed to include the feminine and neuter genders.

In Witness Whereof, the parties hereto have executed this agreement in triplicate the day and year first above written.

[Seal]

MILLER & LUX INCOR-
PORATED

By (Illegible)

Vice President

By W. S. MITCHELL

Assistant Secretary

L. G. HELM

Purchaser

.....

Purchaser

Approved: W. S. M.

Form Approved, Attorney.

Description Approved: I.C.C., Engineer.

Compared.....to.....

Full name of wife of purchaser: Etta Helm.

Address of Purchaser: 1413-17 Bakersfield,

Calif. (Must be inserted.) [35]

Assignment

For value received, the above named purchaser hereby assigns and grants unto.....

.....of....., California,

all of his right, title, interest, claim and demand in and to the foregoing agreement, including the right to demand and receive the deed therein mentioned.

This assignment is subject to the approval of Miller & Lux Incorporated.

Purchaser.

Purchaser.

I hereby accept the assignment of the foregoing agreement and assume and promise to keep and

perform all of the covenants and agreements thereof as therein required.

Assignee.

The foregoing assignment and acceptance is hereby approved.

Dated this day of, 19....

MILLER & LUX, INCORPORATED,

By

I consent to the above assignment.

Wife of Purchaser.

PAYMENTS—(Ruled form not filled in.) [36]

EXHIBIT No. 3

DECLARATION OF TRUST

For Quitclaim Deed

See Book 765, Page 372 of Official Record

Whereas, under date of January 8th, 1937, Miller & Lux Incorporated, a corporation, as seller, did make and enter into two certain agreements with L. G. Helm, as purchaser, full terms and conditions of which agreements have been fully read, understood, and are hereby approved by the parties hereto, and which agreements provide for the sale and purchase of the following described real property:

The East half of the southeast quarter ($E \frac{1}{2}$ of S.E. $\frac{1}{4}$) of Section twenty five (25), and the southeast quarter (S.E. $\frac{1}{4}$) of Section thirty-six (36), all in Township twenty-four (24) south, Range twenty-one (21) East, M. D. B. M., in the County of Kings, State of California; and

The North half ($N \frac{1}{2}$) and the east half of the southwest quarter ($E \frac{1}{2}$ of S.W. $\frac{1}{4}$) of Section thirty (30); the south half of the north half ($S. \frac{1}{2}$ of $N. \frac{1}{2}$) of Section twenty-nine (29); the southwest quarter (S.W. $\frac{1}{4}$) and the south half of the northwest quarter ($S \frac{1}{2}$ of N.W. $\frac{1}{4}$) and the west half of the northeast quarter ($W. \frac{1}{2}$ of N.E. $\frac{1}{4}$) of Section thirty-two (32); the west half ($W \frac{1}{2}$) of Section thirty-three (33); and the west half ($W \frac{1}{2}$) of Section thirty-four (34), all in Township twenty-four (24) South, Range twenty-two (22) East, M. D. B. M., in the County of Kings, State of California; and

The north half of the northwest quarter ($N \frac{1}{2}$ of N.W. $\frac{1}{4}$); of Section three (3); the northeast quarter and the north half of the southeast quarter ($N \frac{1}{2}$ of S.E. $\frac{1}{4}$) of Section four (4); all of the north half of the north half ($N \frac{1}{2}$ of $N \frac{1}{2}$), except the northeast quarter of the northeast quarter (N.E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$) and the east 29.69 acres of the northwest quarter of the northeast quarter (N.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$) of Section six (6), all in Township twenty-five (25), south, Range twenty-two (22) East, M. D. B. M., in the County of Kern, State of California; and

The East half of the southwest quarter (E. $\frac{1}{2}$ of S.W. $\frac{1}{4}$), and the southwest quarter of the southwest quarter (S.W. $\frac{1}{4}$ of S.W. $\frac{1}{4}$) of Section one (1), and a portion of the north half (N. $\frac{1}{2}$) of said Section one (1) being more particularly described as follows: Beginning at a point on the east line of said Section 1 which bears south 0 degrees 09 minutes West 1322.65 feet from the northeast corner of said Section 1, thence along east line of Section 1, south 0 degrees 09 minutes west 1322.65 feet to the east quarter section corner of Section 1, thence along the east and west quarter section line of Section 1, north 89 degrees 58 minutes west 3052.10 feet, thence along the east line of a one hundred and forty acre tract of land conveyed by Miller & Lux Incorporated to G. Henshaw by deed dated February 24, 1936, north 0 degrees 20 $\frac{3}{4}$ minutes east 1322.55 feet, thence south 89 degrees 58 minutes east 3048.05 feet to the point of beginning; all in township twenty-five (25) south, Range twenty-one (21) East, M. D. B. M., in the County of Kern, State of California.

And Whereas, in truth and in fact, such agreements were executed and made by the said L. G. Helm for and in behalf of himself and the following named persons to-wit:

Lon V. Smith

M. J. Davis

Oscar Rudnick

Morris Laba

L. G. Helm

Geo. L. Bradford

Morris Himovitz

Max Himovitz

Fred E. Borton

each of such persons purchasing and receiving an undivided one-ninth interest under said contracts and each of said persons paying on account of the consideration thus far paid an equal one-ninth thereof, and each of said persons now hereby agreeing to and with the said L. G. Helm and to and with each other, that they will pay and contribute on account of all future payments required by said contracts and otherwise as hereinafter provided, an equal one-ninth each thereof. [37]

Now Therefore, in consideration of the premises the said L. G. Helm and Etta Helm, his wife, do hereby acknowledge and declare that the interest held by the said L. G. Helm under said contracts and all interest held or to be hereafter acquired under said contracts in the land therein described or otherwise acquired in and to said real property is held and shall be held by said L. G. Helm in trust thereof for the following named persons in the proportions set after their names; (Certain of the beneficiaries under said trust having elected that their interest thereunder shall be a joint estate with their wives and in each instance of a joint estate, the interest held by husband and wife in joint tenancy being one-ninth).

1. Lon V. Smith and Jane W. Smith, his wife, as joint tenants, $1/9$.

2. Geo. L. Bradford and Marion Bradford, his wife, as joint tenants, 1/9.

3. M. J. Davis and Lorene M. Davis, his wife, as joint tenants, 1/9.

4. Morris Himovitz, 1/9.

5. Max Himovitz, 1/9.

6. Oscar Rudnick, 1/9.

7. Morris Laba, 1/9.

8. Fred E. Borton and Carrie L. Borton, his wife, as joint tenants, 1/9.

9. L. G. Helm.

Said Trustee shall have and hold the legal title to said contracts and all interest now held or hereafter acquired in and to said real property for the benefit of said beneficiaries and to manage and control the same, to sell, convey, lease, including oil and gas leases, for any period or periods within or extending beyond the life of this trust, including for purposes of developing and producing oil, gas, and other hydrocarbon substances from said real property, to encumber the same and to execute and deliver any such conveyances, encumbrances, leases and oil and gas leases, providing, however, said trustee shall first have obtained from the committee hereinafter provided, written consent to so execute and deliver such conveyances, encumbrances, leases and oil and gas leases.

The trustee shall ascertain and pay any amount of principal and interest which may become due and payable under the terms and conditions of said contracts and also upon any encumbrances hereinafter

placed upon said property including taxes and assessments, providing, however, that each of the beneficiaries shall provide their proportion of the funds necessary for the payment of the same and said trustee shall collect pay out, and distribute all income, profits and receipts from said real property, Excepting, However, that he shall retain the sum of \$1.00 annually in full payment of his services in connection with this trust.

In the event any beneficiary hereunder shall fail to pay his proportion of any sums so expended by the trustee, said trustee is hereby empowered and authorized to advance any such sum and in the event such defaulting beneficiary does not repay such advance within ten days after receipt of written demand therefor from said trustee, then in that event the trustee shall give written notice of such default to each of the remaining beneficiaries and should such remaining beneficiaries or any one of them not purchase the interest in this trust of such defaulting beneficiary within fifteen days of such last mentioned notice, then the trustee, with the written consent of the committee hereinafter referred to, is hereby authorized and directed to proceed to sell and shall sell the interest of such defaulting beneficiary in the manner of the sale of real estate upon foreclosure under deeds of trust securing indebtedness, said trustee giving notice and conducting said sale as provided by statute therefor.

Should sale be so made of the interest of any beneficiary hereunder then such beneficiary whose

interest is so sold shall be debarred from any right, title or interest whatsoever in and to said contracts and real estate, or any beneficial interest [38] therein and of all equity of redemption of the same and the certificate of the trustee to the purchaser at such sale shall be conclusive evidence that such beneficial interest and all title thereto has actually passed to such purchaser, providing, however, that if the interest so sold shall bring more than the money owed by such defaulting beneficiary including the expenses of such sale the trustee shall account and pay to the beneficiary whose interest is so sold, any such excess.

No assignment of any beneficial interest or part thereof shall be valid unless and until the trustee shall receive a duly executed original of such assignment duly accepted by the assignee disclosing the address of such assignee and including upon the part of such assignee an assumption of the obligation of the beneficiaries herein as to the interest so assigned.

There is hereby created a committee of four with whom the trustee shall have an equal vote as if he were a member thereof, which shall have, and is hereby granted, exclusive power to manage and control the property, the subject of the trust, and to lease, including for oil and gas development purposes, sell or otherwise dispose or encumber the same, when in their judgment it is to the advantage of the trust and of the persons interest therein so to do, and said trustee shall execute and deliver

such conveyances, encumbrances, leases and oil and gas leases, as he may be directed to do so by the majority vote of said committee at a meeting duly and regularly called.

In case of vacancy in the trusteeship or in said committee, the same shall be filled and the said committee shall have and is hereby granted full power to choose any of the beneficiaries in this trust to serve on said committee or to act as substitute trustee until a new trustee is appointed, which trustee shall be appointed by a majority vote of the beneficiaries in this trust, and such new trustee shall succeed to the right, powers and authorities of the trustee without any special conveyance or transfer from the former trustee, or otherwise to the new trustee and until such time as such substitute or new trustee shall be appointed, the said committee shall as a unit have, and is hereby granted, full power and control over the trust property, including all of the rights and duties of such trustee.

The trustee herein named shall continue in office until his death, resignation or removal by a final order of court, and each member of the committee hereinafter named shall continue in office until his death, resignation or removal by a final order of the court.

The following named persons are hereby designated as constituting the committee referred to, to-wit:

Lon V. Smith

Morris Himovitz

M. J. Davis

Fred E. Borton

It is further hereby agreed that this trust shall continue for a period of twenty-five years from this date, unless and until sooner terminated by the agreement of the parties hereto, or in accordance with the terms hereinafter set forth.

This trust may be terminated at any time upon the consent and written approval of the holders of two-thirds of the total beneficial interest herein, and upon such termination the property being the subject of this trust shall be conveyed by the trustee to the beneficiaries prorately according to the interest so held, it being understood that in the event at the date of such partition and division should said real property or any portion thereof be subject to any existing oil and gas lease, that all of the beneficiaries at the date of such termination shall participate prorately in all future royalties, rents, issues and profits paid under the terms and conditions of any existing lease or leases.

In the event the beneficiaries herein are unable to decide among themselves [39] as to an equitable partition of said property, then in that event the committee shall divide such property in such equal units as may in their judgment be the most equitable and practicable partition of such property, whereupon each of said beneficiaries shall draw by lot the unit to which they shall become entitled.

Upon the completion of the trust by lapse of

time or otherwise, unless previously said trust property has been so partitioned, same shall be distributed among the beneficiaries in undivided interests in proportion to their respective interest, and all things of value arising therefrom or subject thereto and in the hands of the trustee, shall likewise be distributed.

In Witness Whereof, the said L. G. Helm, as trustee, and the said L. G. Helm and Etta Helm, his wife, as individuals, have executed this declaration and the said beneficiaries have consented thereto, this 29th day of June, 1937.

L. G. HELM,

L. G. HELM, as Trustee.

L. G. HELM,

L. G. HELM, individually.

ETTA HELM,

ETTA HELM, individually.

We, the undersigned, beneficiaries in the foregoing declaration, have read, understood, and do hereby approve the same, and agree to be fully bound thereby.

LON V. SMITH,

OSCAR RUDNICK,

GEO. L. BRADFORD,

FRED E. BORTON,

E. J. DAVIS,

MORRIS LABA,

MORRIS HIMOVITZ,

MAX HIMOVITZ.

State of California,
County of Kern—ss.

On this 22nd day of July, A.D. 1937, before me, Ruth Howard, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm, as Trustee, L. G. Helm, individually, and Etta Helm, individually, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof: I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] RUTH HOWARD,
Notary Public in and for said County and State of
California.

State of California,
County of Kern—ss.

On this 22nd day of July, A. D. 1937, before me, Ruth Howard, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn personally appeared Lon V. Smith, Oscar Rudnick, Geo. L. Bradford, Fred E. Borton, E. J. Davis, Morris Laba, Morris Himovitz and Max Himovitz, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof: I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] RUTH HOWARD,
Notary Public in and for said County and State of California.

Recorded at request of Borton Petrini & Conron
Jul-22-1937 at 27 min. past 10 A.M. in Book 737 of
Official Records Page 158 Kern County Records.

CHAS. H. SHOMATE,
Recorder.

Checked by: B. SHOMATE.

18710 Compared By:

F. HOBERECHT.

(Duly Verified.) [40]

EXHIBIT No. 4

(Copy)

(Typist's note: This page contains information appearing on back of within instrument.)

STANDARD OIL COMPANY OF CALIFORNIA

Dated.....

[42]

This Indenture, dated the 18th day of May, 1938, between L. G. Helm and Etta Helm, his wife, hereinafter referred to as "Grantor," and Standard Oil Company of California, a Delaware corporation, hereinafter referred to as "Grantee,"

Witnesseth:

That Grantor, in consideration of Ten Dollars

(\$10.00) and other valuable considerations, the receipt of which is hereby acknowledged, hereby grants to Grantee, all oil, gas, asphaltum and other hydrocarbons and substances associated therewith, in, on and under the following described land:

The North Half ($N\frac{1}{2}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Three (3) and the Northeast Quarter ($NE\frac{1}{4}$) of Section Four (4), Township Twenty-five (25) South, Range Twenty-two (22) East, M. D. B. & M., Kern County, California;

The South Half ($S\frac{1}{2}$) of the North Half ($N\frac{1}{2}$) of Section Twenty-nine (29); the Northwest Quarter ($NW\frac{1}{4}$) of Section Thirty-three (33), and the Northeast Quarter ($NE\frac{1}{4}$) of Section Thirty-four (34), Township Twenty-four (24) South, Range Twenty-two (22) East, M. D. B. & M., Kings County, California,

with the right to Grantee to enter upon said land and to explore (by geological, geophysical or other methods, whether similar to those specified or not and whether now known or not, including the drilling of shallow holes for the purpose of determining subsurface geological conditions) and drill for, develop, produce, extract, treat, store and remove said minerals thereon and therefrom, and to conduct any and all other operations which Grantee may deem necessary in the premises, including the right to develop and use on said land water necessary for such operations, and the right to construct, use, maintain, erect, replace, change the location

of and remove on and from said land all pipe lines, telephone and telegraph lines, sumps, derricks, plants, buildings and other structures and equipment which Grantee may desire in carrying on its operations on said land, including the right of ingress and egress to and from said land for any and all of said purposes; on condition that in event oil, gas, asphaltum or any other hydrocarbon is not discovered on said land and production thereof is not in actual progress, on or before twenty- (20) years from the date hereof, all the rights, title and interest herein granted shall cease and determine and the estate herein granted shall revert to and become revested in the party then owning the surface title to said land.

Grantee agrees in event it shall develop, produce and remove oil, gas or any other of said substances on and from said land, as compensation for the use by it of the surface of said land and the exercise by it of the privileges granted, to pay to Grantor the following:

(a) The value of the one-eighth ($1/8$ th) part of the crude oil so produced and saved from said land at the current prices paid by Grantee, or any successor of Grantee, to producers for oil of like gravity and quality in the same vicinity.

(b) The value at five cents (5c) per thousand cubic feet of the one-eighth ($1/8$ th) part of the gas produced and saved and sold from said land. For the purposes of this paragraph, gas shall be measured in cubic feet at 14.73

pounds per square inch absolute pressure, at a temperature of 60° Fahrenheit and calculated in accordance with the procedure outlined in California Natural Gasoline Association Bulletin No. TS-353, or any revisions thereof which may be adopted by said association. [43]

(c) The value of six per cent (6%) of all gasoline extracted and saved from gas produced from said land at the prices currently offered or paid by Grantee or any of its present or future subsidiaries to producers for gasoline of like specifications and quality in the same vicinity.

The right to receive said payments shall be a covenant running with the surface title to said land and in event said surface title shall be owned in severalty by two or more persons then said payments shall be apportioned among and paid to such surface owners in the proportion that the surface area owned by each bears to the surface area of the land hereinabove described.

Grantee is authorized, before making any of said payments, to deduct therefrom the one-eighth (1/8th) part of any taxes resulting from or attributable to the discovery or production of oil, gas or any other substances on or from said land.

Grantee shall not be required to pay to Grantor any sum for oil, gas or water produced from said land and used in connection with its operations thereon, nor for any other substances which Grantee has the right to remove therefrom other than oil and gas.

In the event wells are drilled and oil produced in paying quantities upon adjoining property and within 250 feet of the exterior limits of any land herein described, Grantee agrees either to offset such wells by the commencement of actual drilling within ninety (90) days after the production of oil in paying quantities from such wells or release herefrom twenty (20) acres of the herein described premises immediately adjoining or offsetting said producing wells.

The Grantee shall not assign this grant (except to the successor or successors, if any, in the business of Grantee) without the consent, in writing, of Grantor, his successors or assigns.

The provisions hereof shall inure to the benefit of and shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns, and any rights or privileges of Grantee hereunder may be exercised by any of Grantee's subsidiaries.

In Witness Whereof, the parties hereto have executed this agreement.

(s) L. G. HELM,

(s) ETTA HELM.

STANDARD OIL COMPANY
OF CALIFORNIA,

By (s) C. E. BULTMANN,
Contract Agent.

By (s) G. M. POST,
Asst. Secretary.

State of California,
County of Kern—ss.

On this 24 day of May, 1938 before me, M. J. Davis, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

(s) M. J. DAVIS,

Notary Public in and for the County of Kern, State
of California. [44]

EXHIBIT No. 5

(Copy)

No.

LEASE

From

.....
.....

Lessor.

To

.....
.....

Lessee.

Recorded at Request of

.....
.....

Atmin. past M. in
Book of Official Records,
Page of the Records of
County, California.

.....
Recorder.

By

Deputy Recorder.

When recorded return to

Published by

Petroleum World

412 West Sixth St.

Los Angeles, Calif.

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Publications, Inc.)

Exhibit No. 5—(Continued)

OIL AND GAS LEASE

This Agreement, made and entered into this 19th day of May, 1938, by and between L. G. Helm, and Etta Helm, his wife, party of the first part, herein styled "Lessor," and Barnsdall Oil Company, a corporation party of the second part, herein styled "Lessee."

Witnesseth: That for and in consideration of the sum of Ten Dollars, lawful money of the United States of America, to the Lessor paid, and of other valuable considerations, the receipt of all of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained by the Lessee to be kept and performed, the Lessor has granted, leased, let and demised, and by these presents does grant, lease, let and demise unto the Lessee, its grantees, successors and assigns, the land and premises hereinafter described, with the sole and exclusive right to the Lessee to drill for, produce, extract and take oil, gas, asphaltum and other hydrocarbons (and water for its operations) from, and to store the same upon, said land during the term hereinafter provided, with the right of entry thereon at all times for said purposes, and to construct, use, maintain, erect, repair and replace thereon and to remove therefrom all pipe lines, telephone and telegraph lines, tanks, machinery, buildings and other structures which the Lessee may de-

Exhibit No. 5—(Continued)

sire in carrying on its business and operations on said land, or adjoining or neighboring premises operated by Lessee, with the further right to the Lessee or any of its subsidiaries to erect, maintain, operate and remove a plant will all necessary appurtenances, for the extraction of gasoline from gas produced from said land and/or other premises in the vicinity of said land, including all rights necessary or convenient thereto, together with rights-of-way for passage over, upon and across, and ingress and egress to and from, said land, for any or all of the above mentioned purposes. The possession by the Lessee of said land shall be sole and exclusive, excepting only that the Lessor reserves the right to occupy said land or to lease the same for agricultural, horticultural, or grazing uses, which uses shall be carried on subject to, and with no interference with, the rights or operations of the Lessee hereunder. The land which is the subject of this lease is situated in the County of Kings, State of California, and is described as follows, to-wit:

East half of Southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) of Section Thirty-three (33), and East half of Southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) of Section Thirty-four (34) all in Township Twenty-four (24) South, Range Twenty-two (22) East, M.D.B.M. and contains 160 acres, more or less.

To Have And To Hold the same for a term of twenty (20) years from and after the date hereof, and so long thereafter as oil or gas, or casinghead

Exhibit No. 5—(Continued)

gas, or other hydrocarbon substances, or either or any of them, is produced therefrom.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty on oil the equal one-eighth part of the proceeds of all oil produced, saved and sold from the leased premises, after making the customary deductions for temperature, water and b.s. at the posted available market price in the district in which the premises are located for oil of like gravity the day the oil is run into purchaser's pipe line or storage tank, and settlement shall be made by Lessee on or before the 25th day of each month for accrued royalties for the preceding calendar month. At Lessor's option exercised not oftener than once in any one calendar year upon sixty (60) days' previous written notice, Lessee shall deliver into Lessor's tanks on the leased premises, or at mouth of well to pipe line designated by Lessor, free of cost, Lessor's royalty oil, provided that Lessee may at any time purchase and take Lessor's royalty oil at said posted available market price. No royalty shall be due the Lessor for or on account of oil lost through evaporation, leakage or otherwise prior to the marketing of the same or delivery to Lessor if royalty oil is being taken in kind.

2. For all gas produced, saved and sold from said land by Lessee, the Lessee shall pay as royalty the $\frac{1}{8}$ th part of the net proceeds from the sale of

Exhibit No. 5—(Continued)

such gas, but nothing herein contained shall be deemed to obligate the Lessee to produce, save, sell or otherwise dispose of gas from said land. For the purpose of having gasoline extracted from gas produced from said land, the Lessee may transport, or cause to be transported, to a gasoline extraction plant located either on said land or on other lands, all or any portion of such gas where it may be commingled with gas from other properties. Lessee shall meter such gas so transported and such meter readings, together with the results of content tests by recognized methods and made at approximately regular intervals, at least once every month, shall furnish the basis for computation of the amounts of gasoline and residue gas to be credited to this lease. Gas used or consumed, or lost in the operations of any such plant, shall be free of charge, and Lessee shall not be held accountable to the Lessor for the same or for any royalty thereon. Lessee shall not be required to pay royalty for or on account of any gas used for repressuring any oil-bearing formation which is being produced from by a well or wells on the leased premises, even though such repressuring is done by injecting such gas into wells not situated on the leased premises. The Lessor shall be entitled to gas free of charge from any gas wells on the leased premises for all stoves and inside lights in the principal dwelling houses on said land by making his own connections at a point designated by Lessee, the taking and use of said gas

Exhibit No. 5—(Continued)

to be at the Lessor's sole risk and expense at all times.

3. Any casinghead gasoline extracted from gas produced from said land shall, at the option of the Lessee, be returned to the oil produced therefrom and shall be treated as a part thereof; otherwise the Lessee shall pay to the Lessor as royalty for such extracted gasoline the equal one-eighth part of the net proceeds of the sale thereof after deducting transportation and extraction costs, or of the Lessee's portion thereof if extracted on a royalty basis. If there shall be no available market and/or no public or open market price for the gasoline at the place of extraction, then the Lessee shall be entitled to sell and/or dispose of all the gasoline for the best price and on the best terms obtainable, but in no case shall settlement of royalty be at a less price than that obtained by the Lessee for its portion of the gasoline.

4. The Lessee shall not be required to account to the Lessor for, or pay royalty on, oil, gas or water produced by the Lessee from said land and used by it in its operations hereunder, but it may use such oil, gas and water free of charge.

5. It is expressly understood and agreed that the considerations expressed and/or referred to herein include all rental for the first five years of the term hereof. Commencing with the sixth year of the term hereof, if the Lessee has not theretofore commenced drilling operations on said land or ter-

Exhibit No. 5—(Continued)

minated this lease as herein provided, the Lessee shall pay or tender to the Lessor in advance, as rental, the [45] sum of Twenty-five (\$25.00) Dollars per acre for so much of said land as may then still be held under this lease, until drilling operations are commenced or this lease terminated as herein provided.

6. The Lessee agrees to commence drilling operations on said land within ten years from the date hereof (unless the Lessee has sooner commenced the drilling of an offset well on said land as herein provided) and to prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; or it may at any time within said period terminate this lease and surrender said land as hereinafter provided. No implied covenant shall be read into this lease requiring the Lessee to drill or to continue drilling on said land, or fixing the measure of diligence therefor. The Lessee may elect not to commence or prosecute the drilling of a well on said land as above provided, and thereupon this lease shall terminate.

7. If the Lessee shall elect to drill on said land, as aforesaid, and oil or gas shall not be obtained in paying quantities in the first well drilled, the Lessee shall, within six (6) months after the completion or abandonment of the first well, commence on said land drilling operations for a second well, and shall

Exhibit No. 5—(Continued)

prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or until the well is drilled to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; and the Lessee shall in like manner continue its operations until oil or gas in paying quantities is found, but subject always to the terms and conditions hereof and with the rights and privileges to the Lessee herein given.

8. If oil or gas is found in paying quantities in any well so drilled by the Lessee on said land, the Lessee, subject to the provisions hereof and to the suspension privileges hereinafter set forth, shall continue to drill additional wells on said land as rapidly as one string of tools working with reasonable diligence can complete the same, until there shall have been completed on said land as many wells as shall equal the total acreage then held under this lease divided by twenty; whereupon the Lessee shall hold all of the land free of further drilling obligations; provided, that the Lessee may defer the commencement of drilling operations for the second or any subsequent well for a period not to exceed six (6) months from the date of completion of the well last preceding it; provided further, if oil is found in paying quantities in any well so drilled by the Lessee on said land, the Lessee may further defer the commencement of drilling operations for the second or any subsequent well on said land for a period not to exceed two (2) years from

Exhibit No. 5—(Continued)

and after six (6) months from the date of completion of the well last preceding it, by paying or tendering to the Lessor as rental, monthly in advance commencing with the expiration of such six (6) months' period, a sum equal to Five (\$5.00) Dollars for each acre of land then subject to this lease, until drilling is resumed or drilling obligations are terminated as herein provided. The Lessee shall be entitled to drill as many additional wells on said land as it desires. Except as herein otherwise provided, it is agreed that the Lessee shall drill such wells and operate each completed well with reasonable diligence and in accordance with good oil field practice so long as such wells shall produce oil in paying quantities while this lease is in force as to the portion of said land on which such well or wells are situated; but in conformity with any reasonable conservation or curtailment program affecting the drilling of wells or the production of oil and/or gas from said land, which the Lessee may either voluntarily or by order of any authorized governmental agency subscribe to or be subject to. Drilling and producing operations hereunder may also be suspended while the price offered generally to producers in the same vicinity for oil of the quality produced from said land is seventy-five (75) cents or less per barrel at the well, or when there is no available market for the same at the well.

9. If the Lessee shall complete a well or wells on said land which shall fail to produce oil in paying

Exhibit No. 5—(Continued)

quantities but which produces gas in paying quantities, the Lessee, shall either sell so much of said gas as it may be able to find a market for, and pay the Lessor the royalty provided herein on the volume of gas so sold, or Lessee may, if it so elects, suspend the operation of such gas well or wells from time to time and during the period of such suspensions pay or tender to the Lessor as rental monthly in advance, a sum equal to One Dollar (\$1.00) per acre for so much of the acreage then held under this lease, such rental to continue until producing operations are resumed and royalties are paid to the Lessor for gas sold as above provided. It is further understood and agreed that if the Lessee shall complete a well which shall fail to produce oil in paying quantities, but which produces gas in paying quantities, it shall not be obliged to conduct any further drilling operations on said land (except the drilling of offset wells as hereinafter provided) unless and until, in its judgment, the drilling of such additional wells under the provision of this lease is warranted in view of existing or anticipated market requirements.

10. If it should hereafter appear that the Lessor at the time of making this lease owns a less interest in the leased land than the fee simple estate or the entire interest in the oil and gas under said land, then the rentals and royalties accruing hereunder shall be paid to the Lessor in the proportion which his interest bears to the entire fee simple estate or to the entire estate in said oil and gas.

Exhibit No. 5—(Continued)

11. There is hereby expressly reserved to the Lessor, and as well to the Lessee, the right and privilege to convey, transfer or assign in whole or in part its interest in this lease or in the leased premises or in the oil and/or gas therein or produced therefrom, but if the Lessor shall sell or transfer any part or parts of the leased premises or any interest in the oil and/or gas under any part or parts thereof the Lessee's drilling obligations shall not thereby be altered, increased or enlarged, but the Lessee may continue to operate the leased premises and pay and settle rents and royalties as an entirety.

12. In the event that a well is drilled upon adjoining property within 250 feet of the exterior limits of any land at the time embraced in this lease and oil or gas is produced therefrom in paying quantities, and the drilling requirements as specified in paragraph 8 hereof are not fully complied with, and the owner of such well shall operate the same and market the oil or gas produced therefrom, then the lessee agrees to offset such well by the commencement of drilling operations within ninety days after it is ascertained that the production of oil or gas from such well is in paying quantities and that the operator thereof is then producing and marketing oil or gas therefrom. For the purpose of satisfying obligations hereunder such offset well or wells shall be considered as other wells required to be drilled hereunder.

13. The obligations of the Lessee hereunder shall be suspended while the Lessee is prevented from complying therewith, in whole or in part, by strikes, lockouts, action of the elements, accidents, rules and regulations of any Federal, State, Municipal or other governmental agency, or other matters or conditions beyond the control of the Lessee, whether similar to the matters or conditions herein specifically enumerated or not.

14. Water produced by the Lessee but not used by it in its operations hereunder, may be used by the Lessor for surface operations on said land.

15. The Lessee shall pay all taxes on its improvements and all taxes on its oil stored on the leased premises on the first Monday of March in each year, and seven-eighths of the taxes levied and assessed against the petroleum mineral rights. Lessor agrees to pay all taxes levied and assessed against the land as such and one-eighth of the taxes levied and assessed against the petroleum mineral rights. In the event the State, United States or any municipality levies a severance or gross production tax on the oil produced hereunder, then and in that event the Lessee shall pay seven-eighths of said tax and Lessor shall pay one-eighth of said tax.

16. The Lessee agrees not to drill any well on said land within one hundred (100) feet of the now existing buildings thereon without the written consent of the Lessor. The Lessee agrees to pay all damages directly occasioned by its operations to crops on said land.

Exhibit No. 5—(Continued)

17. The Lessor may at all reasonable times examine said land, the work done and in progress thereon, and the production therefrom, and may inspect the books kept by the Lessee in relation to the production from said land, to ascertain the production and the amount saved and sold therefrom. The Lessee agrees, on written request, to furnish to the Lessor copies of logs of all wells drilled by the Lessee on said land. [46]

18. All the labor to be performed and materials to be furnished in the operations of the Lessee hereunder shall be at the cost and expense of the Lessee, and the Lessor shall not be chargeable with, or liable for, any part thereof; and the Lessee shall protect said land against liens of every character arising from its operations thereon.

19. Upon the written request of the Lessor, the Lessee agrees to lay all pipe lines which it constructs through cultivated fields, below plow depth, and upon similar request agrees to fence all sump holes or other excavations to safeguard livestock on said land.

20. The Lessee shall have the right at any time to remove from said land all machinery, rigs, piping, casing, pumping stations and other property and improvements belonging to or furnished by the Lessee, provided that such removal shall be completed within a reasonable time after the termination of this lease. Lessee agrees after termination of this lease to fill all sump holes and other excavations made by it.

Exhibit No. 5—(Continued)

21. If royalty oil is payable in cash, Lessee may deduct therefrom a proportionate part of the cost of treating unmerchantable oil produced from said premises to render same merchantable. In the event such oil is not treated on the leased premises, Lessor's cash royalty shall also bear a corresponding proportionate part of the cost of transporting the oil to the treating plant. Nothing herein contained shall be construed as obligating Lessee to treat oil produced from the herein described premises. If Lessor shall elect to receive royalty oil in kind, such royalty oil shall be of the same quality as that removed from the leased premises for Lessee's own account, and if Lessee's own oil shall be treated before such removal, Lessor's oil will be treated therewith before delivery to Lessor and Lessor in such event will pay a proportionate part of the cost of treatment.

22. Upon the violation of any of the terms or conditions of this lease by the Lessee and the failure to begin to remedy the same within 90 days after written notice from the Lessor so to do, then, at the option of the Lessor, this lease shall forthwith cease and terminate, and all rights of the Lessee in and to said land be at an end, save and excepting 20 acres surrounding each well producing or being drilled and in respect to which Lessee shall not be in default, and saving and excepting rights-of-way necessary for Lessee's operations, provided, however, that the Lessee may at any time after such

Exhibit No. 5—(Continued)

default, and upon payment of the sum of Ten Dollars (\$10.00) to the Lessor as and for fixed and liquidated damages quitclaim to the Lessor all of the right, title and interest of Lessee in and to the leased lands in respect to which it has made default, and thereupon all rights and obligations of the parties hereto one to the other shall thereupon cease and terminate as to the premises quitclaimed.

23. All royalties and rents payable in money hereunder may be paid to the Lessor by mailing or delivering a check therefor to Bank of America N. T. & S. A. Bank at Bakersfield, Calif., its successors and assigns, herein designated by the Lessor as depository, the Lessor hereby granting to said depository full power and authority on behalf of the Lessor, his heirs, executors, administrators, successors and assigns, to collect and receipt for all sums of money due and payable from the Lessee to the Lessor hereunder. No change in the ownership of the land or minerals covered by this lease, and no assignment of rents or royalties shall be binding on the Lessee until it has been furnished with satisfactory written evidence thereof.

24. Lessor hereby warrants and agrees to defend the title to the land herein described, and agrees that the Lessee, at its option may pay and discharge any taxes, mortgages, or other liens existing, levied or assessed on or against the above described land; and, in the event it exercises such option, it shall be subrogated to the rights of any holder or

Exhibit No. 5—(Continued)

holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax, or other lien, any royalty or rentals accruing hereunder.

25. If and when any oil produced from the demised premises shall for any reason be unmarketable at the well at the price mentioned in paragraph 8 hereof, the Lessor agrees in such case to take and receive his royalty in kind, and should he fail or refuse so to do, then the Lessee may sell the same at the best price obtainable, but not less than the price which the Lessee may be receiving for its own oil of the same quality.

26. The words "drilling operations" as used in this lease shall be held to mean any work or actual operations undertaken or commenced in good faith for the purpose of carrying out any of the rights, privileges or duties of the Lessee under this lease, followed diligently and in due course by the construction of a derrick and other necessary structures for the drilling of an oil or gas well, and by the actual operation of drilling in the ground.

27. On the expiration or sooner termination of this lease, Lessee shall quietly and peaceably surrender possession of the premises to Lessor and deliver to him a good and sufficient quitclaim deed, and so far as practicable cover all sump holes and excavations made by Lessee. Before removing the case from any abandoned well Lessee shall notify Lessor of the intention so to do, and if Lessor with-

Exhibit No. 5—(Continued)

in five (5) days thereafter shall inform Lessee in writing of Lessor's desire to convert such well into a water well, and for that purpose to retain and purchase casing therein, Lessee will leave therein such amount of casing as Lessor may require for said purpose, provided such procedure is lawful and will not violate any rule or order of any official, commission or authority then having jurisdiction in such matters, and provided further that Lessor pay to Lessee fifty (50) per cent of the original cost of the casing on the ground.

28. Lessee may at any time quitclaim this lease in its entirety or as to part of the acreage covered thereby, with the privilege of retaining twenty (20) acres surrounding each producing or drilling well, and thereupon Lessee shall be released from all further obligations and duties as to the area so quitclaimed, and all rentals and drilling requirements shall be reduced pro rata. All lands quitclaimed shall remain subject to the easements and rights-of-way hereinabove provided for. Except as so provided, full right to the land so quitclaimed shall revert in Lessor, free and clear of all claims of Lessee, except that Lessor, his successors or assigns, shall not drill any well on the land quitclaimed within three hundred (300) feet of any producing or drilling well retained by Lessee.

29. If this lease shall be assigned to a particular part or as to particular parts of the leased premises, such division or severance of the lease shall con-

Exhibit No. 5—(Continued)

stitute and create separate and distinct holdings under the lease of and according to the several portions of the leased premises as thus divided, and the holder or owner of each such portion of the leased premises shall be required to comply with and perform the Lessee's obligations under this lease for, and only to the extent of, his portion of the leased area, and performance thereof shall be sufficient to protect and validate this lease as to his portion of the leased area notwithstanding the obligations of the lease may not be fully performed as to another part or portion thereof.

30. This lease and all its terms, conditions and stipulations shall extend to and be binding upon the heirs, executors, administrators, grantees, successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused this agreement to be duly executed as of the date first hereinabove written.

L. G. HELM

ETTA HELM

Lessor

BARNSDALL OIL COMPANY

By R. A. BROOMFIELD, JR.

Vice-Pres.

By PAUL STANLEY

Asst. Sec'y

Lessee

Witness:

.....
.....

Exhibit No. 5—(Continued)

Approved:

Land Dept.

Geol. Dept.

Form Approved:

Legal Dept. [47]

State of California,
County of Kern—ss.

On this 23rd day of May, in the year nineteen hundred and thirty-eight, before me, M. J. Davis, a Notary Public in and for the County of Kern, State of California, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] M. J. DAVIS,
Notary Public in and for the County of Kern, State
of California.

Exhibit No. 5—(Continued)

State of California,
County of Los Angeles—ss.

On this 20th day of May, A. D. 1938, before me, Nelle Council, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared R. A. Broomfield, Jr. and Paul Stanley, known to me to be the Vice-President and Assistant Secretary, respectively, of the Barnsdall Oil Company, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] NELLE COUNCIL

Notary Public in and for said County and State.

My Commission Expires June 24, 1939. [48]

EXHIBIT No. 6

(Copy)

No.

LEASE

From

.....

.....

Lessor.

To

.....

.....

Lessee.

Recorded at Request of

.....

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At.....min. past.....M. in
Book...of Official Rec-
ords, Page of the
Records of.....
County, California.

.....

Recorder.

By

Deputy Recorder.

When recorded return to

Published by

Petroleum World

412 West 6th Street

Los Angeles, Calif.

(Copyright 1935 by Pal-
mer Publications, Inc.)

Exhibit No. 6—(Continued)

OIL AND GAS LEASE

This Agreement, made and entered into this 20th day of May, 1938, by and between L. G. Helm and Etta Helm, husband and wife, party of the first part, herein styled "Lessor," and Pacific Western Oil Corporation, a Delaware corporation, party of the second part, herein styled "Lessee."

Witnesseth: That for and in consideration of Ten (\$10.00) Dollars lawful money of the United States of America, to the Lessor paid, and of other valuable considerations, the receipt of all of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained by the Lessee to be kept and performed, the Lessor has granted, leased, let and demised, and by those presents does grant, lease, let and demise unto the Lessee, its grantees, successors and assigns, the land and premises hereinafter described, with the sole and exclusive right to the Lessee to drill for, produce, extract, take and remove oil, gas, asphaltum and other hydrocarbons (and water without cost for its operations) from, and to store the same upon, said land during the term hereinafter provided, with the right of entry thereon at all times for said purposes, and to construct, use, maintain, erect, repair and replace thereon and to remove therefrom all pipe lines, telephone and telegraph lines, tanks, machinery, buildings and other structures which the Lessee may desire in carrying on its business

Exhibit No. 6—(Continued)

and operations on said land, with the further right to the Lessee or any of its subsidiaries to erect, maintain, operate and remove a plant with all necessary appurtenances, for the extraction of gasoline from gas produced from said land including all rights necessary or convenient thereto, together with rights-of-way for passage over, upon and across, and ingress and egress to and from, said land, for any or all of the above mentioned purposes. The possession by the Lessee of said land shall be sole and exclusive, excepting only that the Lessor reserves the right to occupy said land or to lease the same for agricultural, horticultural, or grazing uses, which uses shall be carried on subject to, and with no interference with, the rights or operations of the Lessee hereunder. The land which is the subject of this lease is situated in the County of Kings, State of California, and is described as follows, to-wit:

West Half of Northeast Quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$) of Section 32, Township 24 South, Range 22 East, M. D. B. & M.,

and contains 80 acres, more or less.

To Have and to Hold the same for a term of twenty (20) years from and after the date hereof and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom.

In consideration of the premises it is hereby mutually agreed as follows:

Exhibit No. 6—(Continued)

1. Lessee shall pay Lessor as royalty on oil the equal one-eighth part of the proceeds of all oil produced, saved and sold from the leased premises, after making the customary deductions for temperature, water and b. s. at the posted available market price in the district in which the premises are located for oil of like gravity the day the oil is run into purchaser's pipe line or storage tank, and settlement shall be made by Lessee on or before the 25th day of each month for accrued royalties for the preceding calendar month. At Lessor's option exercised not oftener than once in any one calendar year upon sixty (60) days' previous written notice, Lessee shall deliver into Lessor's tanks on the leased premises, or at mouth of well to pipe line designated by Lessor free of cost, Lessor's royalty oil, provided that Lessee may at any time purchase and take Lessor's royalty oil at said posted available market price. No royalty shall be due the Lessor for or on account of oil lost through evaporation, leakage or otherwise prior to the marketing of the same or delivery to Lessor if royalty oil is being taken in kind.

2. For all gas produced, saved and sold from said land by Lessee, the Lessee shall pay as royalty the one-eighth part of the net proceeds from the sale of such gas, but nothing herein contained shall be deemed to obligate the Lessee to produce, save, sell or otherwise dispose of gas from said land. For the purpose of having gasoline extracted from

Exhibit No. 6—(Continued)

gas produced from said land, the Lessee may transport, or cause to be transported, to a gasoline extraction plant located either on said land or on other lands, all or any portion of such gas where it may be commingled with gas from other properties. Lessee shall meter such gas so transported and such meter readings, together with the results of content tests by recognized methods made at approximately regular intervals, at least once every month, shall furnish the basis for computation of the amounts of gasoline and residue gas to be credited to this lease. Gas used or consumed, or lost in the operations of any such plant, shall be free of charge, and Lessee shall not be held accountable to the Lessor for the same or for any royalty thereon. Lessee shall not be required to pay royalty for or on account of any gas used for repressuring any oil-bearing formation which is being produced from by a well or wells on the leased premises, even though such repressuring is done by injecting such gas into wells not situated on the leased premises. The Lessor shall be entitled to gas free of charge from any gas wells on the leased premises for all stoves and inside lights in the principal dwelling houses on said land by making his own connections at a point designated by Lessee, the taking and use of said gas to be at the Lessor's sole risk and expense at all times.

2-a. In the event that the gas produced and saved from said land by lessee is processed under

Exhibit No. 6—(Continued)

a contract or contracts with others for the extraction of gasoline therefrom, lessee shall pay to lessor as royalty on the residue gas credited to this lease after deduction of the amount thereof used or consumed or lost in the operation of the gasoline extraction plant, and in lieu of the royalty on gas produced and saved from said land provided to be paid in paragraph 2 hereof, the equal one-eighth part of any royalty which may be received by lessee under the terms and provisions of any such contract or contracts; nothing herein contained, however, shall require lessee to sell or cause to be sold such residue gas or any part thereof unless there is a market for the same at the well.

3. Lessee shall pay to the Lessor as royalty for extracted gasoline the equal one-eighth part of the net proceeds of the sale thereof after deducting transportation and extraction costs, or of the Lessee's portion thereof if extracted on a royalty basis. If there shall be no available market and/or no public or open market price for the gasoline at the place of extraction, then the Lessee shall be entitled to sell and/or dispose of all the gasoline for the best price and on the best terms obtainable, but in no case shall settlement of royalty be at a less price than that obtained by the Lessee for its portion of the gasoline.

4. The Lessee shall not be required to account to the Lessor for, or pay royalty on, oil, gas or water produced by the Lessee from said land and

Exhibit No. 6—(Continued)

used by it in its operations hereunder, but it may use such oil, gas and water free of charge.

5. Coincidentally with the execution of this lease, Lessee has paid to Lessor a cash consideration in the sum of Two Thousand Dollars (\$2,000.00) as rental for the right, if Lessee so elects, to defer the commencement of any drilling operations upon the demised premises for a period of five years from and after the date hereof, that is, to and including the 19th day of May, 1943.

5(a). Commencing with the sixth year of the term hereof, if the Lessee has not theretofore commenced drilling operations on said land or terminated this lease as herein provided, the Lessee shall pay or tender to [49] the Lessor annually in advance, as rental, the sum of Five (\$5.00) Dollars per acre per year for so much of said land as may then still be held under this lease, until drilling operations are commenced or this lease terminated as herein provided.

6. The Lessee agrees to commence drilling operations on said land within ten (10) years from the date hereof (unless the Lessee has sooner commenced the drilling of an offset well on said land as herein provided) and to prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; or it may at any time within said period terminate this lease and surrender said land

Exhibit No. 6—(Continued)

as hereinafter provided. No implied covenant shall be read in this lease requiring the Lessee to drill or to continue drilling on said land, or fixing the measure of diligence therefor. The Lessee may elect not to commence or prosecute the drilling of a well on said land as above provided, and thereupon this lease shall terminate.

7. If the Lessee shall elect to drill on said land, as aforesaid, and oil or gas shall not be obtained in paying quantities in first well drilled, the Lessee shall, within six (6) months after the completion or abandonment of the first well, commence on said land drilling operations for a second well, and shall prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or until the well is drilled to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; and the Lessee shall in like manner continue its operations until oil or gas in paying quantities is found, but subject always to the terms and conditions hereof and with the rights and privileges to the Lessee herein given.

8. If oil or gas is found in paying quantities in any well so drilled by the Lessee on said land, the Lessee, subject to the provisions hereof and to the suspension privileges hereinafter set forth, shall continue to drill additional wells on said land as rapidly as one string of tools working with reasonable diligence can complete the same, until there shall have been completed on said land as many

Exhibit No. 6—(Continued)

wells as shall equal the total acreage then held under this lease divided by twenty; whereupon the Lessee shall hold all of the land free of further drilling obligations; provided, that the Lessee may defer the commencement of drilling operations for the second or any subsequent well for a period not to exceed six (6) months from the date of completion of the well last preceding it. Except as herein otherwise provided, it is agreed that the Lessee shall drill such wells and operate each completed oil well with reasonable diligence and in accordance with good oil field practice so long as such wells shall produce oil in paying quantities while this lease is in force as to the portion of said land on which such well or wells are situated; but in conformity with any reasonable conservation or curtailment program affecting the drilling of wells or the production of all oil and/or gas from said land, which the Lessee may either voluntarily or by order of any authorized governmental agency subscribe to or be subject to. Drilling and producing operations hereunder may also be suspended while the price offered generally to producers in the same vicinity for oil of the quality produced from said land is seventy-five (75) cents or less per barrel at the well, or when there is no available market for the same at the well.

8-a. Anything in this lease contained to the contrary notwithstanding, Lessee shall not be required under the provisions hereof to drill on the demised

Exhibit No. 6—(Continued)

premises a greater number of wells for oil and/or gas in proportion to the acreage involved than are drilled on adjoining lands and if adjoining lands are developed for oil and/or gas on the basis of a greater number of acres per well than is specified in paragraph 8 of this lease, the drilling obligations of this lease shall be deemed fulfilled when Lessee shall have drilled and completed on the demised premises wells for oil and/or gas on the same acreage basis per well as is used for the development of adjoining lands for oil and/or gas; provided, however, Lessee shall not be required in any event to drill on the demised premises in excess of one well to twenty (20) acres, including offsets.

9. If the Lessee shall complete a well or wells on said land which shall fail to produce oil in paying quantities but which produces gas in paying quantities, the Lessee, shall either sell so much of said gas as it may be able to find a market for, and pay the Lessor the royalty provided herein on the volume of gas so sold, or Lessee may, if it so elects, suspend the operation of such gas well or wells from time to time and during the period of such suspension pay or tender to the Lessor as rental monthly in advance, a sum equal to \$5.00 per acre for so much of the acreage then held under this lease, such rental to continue until producing operations are resumed and royalties are paid to the Lessor for gas sold as above provided. It is further understood and agreed that if the Lessee shall

Exhibit No. 6—(Continued)

complete a well which shall fail to produce oil in paying quantities, but which produces gas in paying quantities, it shall not be obliged to conduct any further drilling operations on said land (except the drilling of offset wells as hereinafter provided) unless and until, in its judgment, the drilling of such additional wells under the provision of this lease is warranted in view of existing or anticipated market requirements.

10. If it should hereafter appear that the Lessor at the time of making this lease owns a less interest in the leased land than the fee simple estate or the entire interest in the oil and gas under said land, then the rentals and royalties accruing hereunder shall be paid to the Lessor in the proportion which his interest bears to the entire fee simple estate or to the entire estate in said oil and gas.

11. There is hereby expressly reserved to the Lessor, and as well to the Lessee, the right and privilege to convey, transfer or assign in whole or in part its interest in this lease or in the leased premises or in the oil and/or gas therein or produced therefrom, but if the Lessor shall sell or transfer any part or parts of the leased premises or any interest in the oil and/or gas under any part or parts thereof the Lessee's drilling obligations shall not thereby be altered, increased or enlarged, but the Lessee may continue to operate the leased premises and pay and settle rents and royalties as an entirety.

Exhibit No. 6—(Continued)

12. In the event a well is drilled on adjoining property within three hundred thirty (330) feet of the exterior limits of any land at the time embraced in this lease and oil or gas is produced therefrom in paying quantities and the drilling requirements as specified in paragraph 8 hereof are not fully complied with, and the owner of such well shall operate the same and market the oil or gas produced therefrom, then the Lessee agrees to offset such well by the commencement of drilling operations within ninety days after it is ascertained that the production of oil or gas from such well is in paying quantities and that the operator thereof is then producing and marketing oil or gas therefrom. For the purpose of satisfying obligations hereunder such offset well or wells shall be considered as other wells required to be drilled hereunder.

13. The obligations of the Lessee hereunder shall be suspended while the Lessee is prevented from complying therewith, in whole or in part, by strikes, lockouts, action of the elements, accidents, rules and regulations of any Federal, State, Municipal or other governmental agency, or other matters or conditions beyond the control of the Lessee, whether similar to the matters or conditions herein specifically enumerated or not.

14. The Lessee shall pay all taxes on its improvements and all taxes on its oil stored on the leased premises on the first Monday of March in

Exhibit No. 6—(Continued)

each year, and seven-eighths of the taxes levied and assessed against the petroleum mineral rights. Lessor agrees to pay all taxes levied and assessed against the land as such and one-eighth of the taxes levied and assessed against the petroleum mineral rights. In the event the State, United States or any municipality levies a license, severance, production or other tax on the oil produced hereunder, or on the Lessee's right to operate, then and in that event the Lessee shall pay seven-eighths of said tax and Lessor shall pay one-eighth of said tax.

15. The Lessee agrees not to drill any well on said land within one hundred (100) feet of the now existing buildings thereon without the written consent of the Lessor. The Lessee agree to pay all damages directly occasioned by its operations to crops on said land.

16. The Lessor may at all reasonable times examine said land, the work done and in progress thereon, and the production therefrom, and may inspect the books kept by the Lessee in relation to the production from said land, to ascertain the production and the amount saved and sold therefrom. The Lessee agrees, on written request, to furnish to the Lessor copies of logs of all wells drilled by the Lessee on said land.

17. All the labor to be performed and materials to be furnished in the operations of the Lessee hereunder shall be at the cost and expense of the Lessee, and the Lessor shall not be chargeable with, or

Exhibit No. 6—(Continued)

liable for, any part thereof; and the Lessee shall protect said land against liens of every character arising from its operations thereon. [50]

18. Upon the written request of the Lessor, the Lessee agrees to lay all pipe lines which it constructs through cultivated fields, below plow depth, and upon similar request agrees to fence all sump holes or other excavations to safeguard livestock on said land.

19. The Lessee shall have the right at any time to remove from said land all machinery, rigs, piping, casing, pumping stations and other property and improvements belonging to or furnished by the Lessee, provided that such removal shall be completed within a reasonable time after the termination of this lease. Lessee agrees after termination of this lease to fill all sump holes and other excavations made by it.

20. If royalty on oil is payable in cash, Lessee may deduct therefrom a proportionate part of the cost of treating oil produced from said premises to render same merchantable as pipe line oil. In the event such oil is not treated on the leased premises, Lessor's cash royalty shall also bear a corresponding proportionate part of the cost of transporting the oil to the treating plant. Nothing herein contained shall be construed as obligating Lessee to treat oil produced from the herein described premises. If Lessor shall elect to receive royalty oil in kind, such royalty oil shall be of the same quality

Exhibit No. 6—(Continued)

as that removed from the leased premises for Lessee's own account, and if Lessee's own oil shall be treated before such removal, Lessor's oil will be treated therewith before delivery to Lessor and Lessor in such event will pay a proportionate part of the cost of treatment.

21. Upon the violation of any of the terms or conditions of this lease by the Lessee and the failure to begin to remedy the same within 90 days after written notice from the Lessor so to do, then, at the option of the Lessor, this lease shall forthwith cease and terminate, and all rights of the Lessee in and to said land be at an end, save and excepting ten (10) acres surrounding each well producing or being drilled and in respect to which Lessee shall not be in default, and saving and excepting rights-of-way necessary for Lessee's operations, provided, however, that the Lessee may at any time after such default, and upon payment of the sum of Ten (\$10) Dollars to the Lessor as and for fixed and liquidated damages quitclaim to the Lessor all of the right, title and interest of Lessee in and to the leased lands in respect to which it has made default, and thereupon all rights and obligations of the parties hereto one to the other shall thereupon cease and terminate as to the premises quitclaimed.

22. All royalties and rents payable in money hereunder may be paid to the Lessor by mailing or delivering a check therefor to Anglo-American National Bank at Bakersfield, California, its succes-

Exhibit No. 6—(Continued)

sors and assigns, herein designated by the Lessor as depositary, the Lessor hereby granting to said depositary full power and authority on behalf of the Lessor, his heirs, executors, administrators, successors and assigns, to collect and receipt for all sums of money due and payable from the Lessee to the Lessor hereunder. No change in the ownership of the land or minerals covered by this lease, and no assignment of rents or royalties shall be binding on the Lessee until it has been furnished with satisfactory written evidence thereof.

23. Lessor hereby warrants and agrees to defend title to the land herein described, and agrees that the Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied or assessed on or against the above described land; and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax, or other lien, any royalty or rentals accruing hereunder.

24. If and when any oil produced from the demised premises shall for any reason be unmarketable at the well at the price mentioned in paragraph 8 hereof, the Lessor agrees in such case to take and receive his royalty in kind, and should he fail or refuse so to do, then the Lessee may sell the same at the best price obtainable, but not less than the price which the Lessee may be receiving for its own oil of the same quality.

Exhibit No. 6—(Continued)

25. The words “drilling operations” as used herein shall be held to mean any work or actual operations undertaken or commenced in good faith for the purpose of carrying out any of the rights, privileges or duties of the Lessee under this lease, followed diligently and in due course by the construction of a derrick and other necessary structures for the drilling of an oil or gas well, and by the actual operation of drilling in the ground.

26. On the expiration or sooner termination of this lease, Lessee shall quietly and peaceably surrender possession of the premises to Lessor and deliver to him a good and sufficient quitclaim deed, and so far as practicable cover all sump holes and excavations made by Lessee. Before removing the casing from any abandoned well Lessee shall notify Lessor of the intention so to do, and if Lessor within five (5) days thereafter shall inform Lessee in writing of Lessor’s desire to convert such well into a water well, and for that purpose to retain and purchase casing therein, Lessee will leave therein such amount of casing as Lessor may require for said purpose, provided such procedure is lawful and will not violate any rule or order of any official, commission or authority then having jurisdiction in such matters, and provided further that Lessor pay to Lessee fifty (50) per cent of the original cost of the casing on the ground.

27. Lessee may at any time quitclaim this lease in its entirety or as to part of the acreage

Exhibit No. 6—(Continued)

covered thereby, with the privilege of retaining ten (10) acres surrounding each producing or drilling well, and thereupon Lessee shall be released from all further obligations and duties as to the area so quitclaimed, and all rentals and drilling requirements shall be reduced pro rata. All lands quitclaimed shall remain subject to the easements and rights-of-way hereinabove provided for. Except as so provided, full right to the land so quitclaimed shall revert in Lessor, free and clear of all claims of Lessee, except that Lessor, his successors or assigns, shall not drill any well on the land quitclaimed within five hundred (500) feet of any producing or drilling well retained by Lessee.

28. If this lease shall be assigned as to a particular part or as to particular parts of the leased premises, such division or severance of the lease shall constitute and create separate and distinct holdings under the lease of and according to the several portions of the leased premises as thus divided, and the holder or owner of each such portion of the leased premises shall be required to comply with and perform the Lessee's obligations under this lease for, and only to the extent of, his portion of the leased area, provided that nothing herein shall be construed to enlarge or multiply the drilling or rental obligations, and provided further that the commencement of the drilling operations and the prosecution thereof, as provided in paragraph six hereof, either by the Lessee or any assignee hereunder, shall protect the lease as a whole.

Exhibit No. 6—(Continued)

29. Notwithstanding anything in this Lease to the contrary, Lessors and/or their duly authorized agent or agents shall, during each calendar year during which this Lease is in force and effect, make at least one inspection, examination and/or audit of the records of the Lessee in connection with the Lessee's operations on said lands and of the methods, devices, meters and gauges and/or measurements used in connection with such operations, and, on failure so to do, and/or on failure of Lessors to make written objection thereto within three (3) months after such inspection, examination and/or audit, such records, operations, methods, devices, meters, gauges, measurements and accountings shall be conclusively deemed to be correct.

30. This lease and all its terms, conditions and stipulations shall extend to and be binding upon the heirs, executors, administrators, grantees, successors and assigns of the parties hereto.

31. Any notice from the Lessor to the Lessee must be given by sending the same by registered mail addressed to the Lessee at 1000 Subway Terminal Bldg., Los Angeles, California, and any notice from the Lessee to the Lessor must be given by sending the same by registered mail, addressed to the Lessor at El Tejon Hotel, Bakersfield, California.

Exhibit No. 6—(Continued)

In Witness Whereof, the parties hereto have caused this agreement to be duly executed as of the date first hereinabove written.

(s) L. G. HELM,

(s) ETTA HELM.

Lessor

Witness:

[Seal]

PACIFIC WESTERN OIL
CORPORATION,

(s) By EMIL KLUTH,

Vice-President.

By D. T. STAPLES,

Asst. Secretary.

Lessee. [51]

State of California,
County of Kern—ss.

On this 23rd day of May, in the year nineteen hundred and thirty-eight, before me, M. J. Davis, a Notary Public in and for the County of Kern, State of California, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Exhibit No. 6—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] (s) M. J. DAVIS,
Notary Public in and for the County of Kern, State
of California.

State of California,
County of Los Angeles—ss.

On this 25th day of May, A. D. 1938, before me, Leila E. Crudele, a Notary Public in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Emil Kluth and D. T. Staples, known to me to be the Vice President and Assistant Secretary, respectively, of the Pacific Western Oil Corporation, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] (s) LEILA A. CRUDELE,
Notary Public in and for said County and State.
My Commission Expires November 27, 1940. [52]

EXHIBIT No. 7

(Copy)

No.

LEASE

From

.....

.....

Lessor.

To

.....

.....

Lessee.

Recorded at Request of

.....

.....

At min. past M. in
Book of Official Records,
Page of the Records of
County, California.

.....

Recorder.

By

Deputy Recorder.

When recorded return to

Published by

Petroleum World

412 West Sixth St.

Los Angeles, Calif.

(Copyright 1935 by Palmer
Publications, Inc.)

Exhibit No. 7—(Continued)

OIL AND GAS LEASE

This Agreement, made and entered into this 21st day of May, 1938, by and between L. G. Helm and Etta Helm, his wife, party of the first part, herein styled "Lessor," and Signal Oil and Gas Company, a corporation, party of the second part, herein styled "Lessee."

Witnesseth: That for and in consideration of the sum of Ten Dollars, lawful money of the United States of America, to the Lessor paid, and of other valuable considerations, the receipt of all of which is hereby acknowledged, and in consideration of the covenants and agreements hereinafter contained by the Lessee to be kept and performed, the Lessor has granted, leased, let and demised, and by these presents does grant, lease, let and demise unto the Lessee, its grantees, successors and assigns, the land and premises hereinafter described, with the sole and exclusive right to the Lessee to drill for, produce, extract and take oil, gas, asphaltum and other hydrocarbons (and water for its operations) from, and to store the same upon, said land during the term hereinafter provided, with the right of entry thereon at all times for said purposes, and to construct, use, maintain, erect, repair and replace thereon and to remove therefrom all pipe lines, telephone and telegraph lines, tanks, machinery, buildings and other structures which the Lessee may desire in carrying on its business and operations on said land, or ad-

Exhibit No. 7—(Continued)

joining or neighboring premises operated by Lessee, with the further right to the Lessee or any of its subsidiaries to erect, maintain, operate and remove a plant with all necessary appurtenances, for the extraction of gasoline from gas produced from said land and/or other premises in the vicinity of said land, including all rights necessary or convenient thereto, together with rights-of-way for passage over, upon and across, and ingress and egress to and from, said land, for any or all of the above mentioned purposes. The possession by the Lessee of said land shall be sole and exclusive, excepting only that the Lessor reserves the right to occupy said land or to lease the same for agricultural, horticultural, or grazing uses, which uses shall be carried on subject to, and with no interference with, the rights or operations of the Lessee hereunder. The land which is the subject of this lease is situated in the County of Kern, State of California, and is described as follows, to-wit:

The North half of the Southeast quarter (N $\frac{1}{2}$ of SE $\frac{1}{4}$) of Section Four (4), Township Twenty-five (25) South, Range Twenty-two (22) East, M.D.B.M., according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor-General, and contains 80 acres, more or less.

To Have and to Hold the same for a term of twenty (20) years from and after the date hereof,

Exhibit No. 7—(Continued)

and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty on oil the equal one-eighth part of the proceeds of all oil produced, saved and sold from the leased premises, after making the customary deductions for temperature, water and b. s. at the posted available market price in the district in which the premises are located for oil of like gravity the day the oil is run into purchaser's pipe line or storage tank, and settlement shall be made by Lessee on or before the 25th day of each month for accrued royalties for the preceding calendar month. At Lessor's option exercised not oftener than once in any one calendar year upon sixty (60) days' previous written notice, Lessee shall deliver into Lessor's tanks on the leased premises, or at mouth of well to pipe line designated by Lessor, free of cost, Lessor's royalty oil, provided that Lessee may at any time purchase and take Lessor's royalty oil at said posted available market price. No royalty shall be due the Lessor for or on account of oil lost through evaporation, leakage or otherwise prior to the marketing of the same or delivery to Lessor if royalty oil is being taken in kind.

2. For all gas produced, saved and sold from said land by Lessee, the Lessee shall pay as royalty

Exhibit No. 7—(Continued)

the 1/8th part of the net proceeds from the sale of such gas, but nothing herein contained shall be deemed to obligate the Lessee to produce, save, sell or otherwise dispose of gas from said land. For the purpose of having gasoline extracted from gas produced from said land, the Lessee may transport, or cause to be transported, to a gasoline extraction plant located either on said land or on other lands, all or any portion of such gas where it may be commingled with gas from other properties. Lessee shall meter such gas so transported and such meter readings, together with the results of content tests by recognized methods made at approximately regular intervals, at least once every month, shall furnish the basis for computation of the amounts of gasoline and residue gas to be credited to this lease. Gas used or consumed, or lost in the operations of any such plant, shall be free of charge, and Lessee shall not be held accountable to the Lessor for the same or for any royalty thereon. Lessee shall not be required to pay royalty for or on account of any gas used for repressuring any oil-bearing formation which is being produced from by a well or wells on the leased premises, even though such repressuring is done by injecting such gas into wells not situated on the leased premises. The Lessor shall be entitled to gas free of charge from any gas wells on the leased premises for all stoves and inside lights in the principal dwelling houses on said land by making his own connections at a point designated

Exhibit No. 7—(Continued)

by Lessee, the taking and use of said gas to be at the Lessor's sole risk and expense at all times.

3. Any casinghead gasoline extracted from gas produced from said land shall, at the option of the Lessee, be returned to the oil produced therefrom and shall be treated as a part thereof; otherwise the Lessee shall pay to the Lessor as royalty for such extracted gasoline the equal one-eighth part of the net proceeds of the sale thereof after deducting transportation and extraction costs, or of the Lessee's portion thereof if extracted on a royalty basis. If there shall be no available market and/or no public or open market price for the gasoline at the place of extraction, then the Lessee shall be entitled to sell and/or dispose of all the gasoline for the best price and on the best terms obtainable, but in no case shall settlement of royalty be at a less price than that obtained by the Lessee for its portion of the gasoline.

4. The Lessee shall not be required to account to the Lessor for, or pay royalty on, oil, gas or water produced by the Lessee from said land and used by it in its operations hereunder, but it may use such oil, gas and water free of charge.

5. It is expressly understood and agreed that the considerations expressed and/or referred to herein include all rental for the first ten years of the term hereof. Commencing with the eleventh year of the term hereof, if the Lessee has not theretofore commenced drilling operations on said land or termi-

Exhibit No. 7—(Continued)

nated this lease as herein provided, the Lessee shall pay or tender to the Lessor in advance, as rental, the [53] sum of Twenty-five (\$25.00) Dollars per acre for so much of said land as may then still be held under this lease, until drilling operations are commenced or this lease terminated as herein provided.

6. The Lessee agrees to commence drilling operations on said land within 20 years from the date hereof (unless the Lessee has sooner commenced the drilling of an offset well on said land as herein provided) and to prosecute the same with reasonable diligence until oil or gas is found in paying quantities, or to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; or it may at any time within said period terminate this lease and surrender said land as hereinafter provided. No implied covenant shall be read into this lease requiring the Lessee to drill or to continue drilling on said land, or fixing the measure of diligence therefor. The Lessee may elect not to commence or prosecute the drilling of a well on said land as above provided, and thereupon this lease shall terminate.

7. If the Lessee shall elect to drill on said land, as aforesaid, and oil or gas shall not be obtained in paying quantities in the first well drilled, the Lessee shall, within six (6) months after the completion or abandonment of the first well, commence on said land drilling operations for a second well, and shall pro-

Exhibit No. 7—(Continued)

secute the same with reasonable diligence until oil or gas is found in paying quantities, or until the well is drilled to a depth at which further drilling would, in the judgment of the Lessee, be unprofitable; and the Lessee shall in like manner continue its operations until oil or gas in paying quantities is found, but subject always to the terms and conditions hereof and with the rights and privileges to the Lessee herein given.

8. If oil or gas is found in paying quantities in any well so drilled by the Lessee on said land, the Lessee, subject to the provisions hereof and to the suspension privileges hereinafter set forth, shall continue to drill additional wells on said land as rapidly as one string of tools working with reasonable diligence can complete the same, until there shall have been completed on said land as many wells as shall equal the total acreage then held under this lease divided by twenty; whereupon the Lessee shall hold all of the land free of further drilling obligations; provided, that the Lessee may defer the commencement of drilling operations for the second or any subsequent well for a period not to exceed six (6) months from the date of completion of the well last preceding it; provided further, if oil is found in paying quantities in any well so drilled by the Lessee on said land, the Lessee may further defer the commencement of drilling operations for the second or any subsequent well on said land for a period not to exceed two (2) years from and after

Exhibit No. 7—(Continued)

six (6) months from the date of completion of the well last preceding it, by paying or tendering to the Lessor as rental, monthly in advance commencing with the expiration of such six (6) months' period, a sum equal to Five (\$5.00) Dollars for each acre of land then subject to this lease, until drilling is resumed or drilling obligations are terminated as herein provided. The Lessee shall be entitled to drill as many additional wells on said land as it desires. Except as herein otherwise provided, it is agreed that the Lessee shall drill such wells and operate each completed well with reasonable diligence and in accordance with good oil field practice so long as such wells shall produce oil in paying quantities while this lease is in force as to the portion of said land on which such well or wells are situated; but in conformity with any reasonable conservation or curtailment program affecting the drilling of wells or the production of oil and/or gas from said land, which the Lessee may either voluntarily or by order of any authorized governmental agency subscribe to or be subject to. Drilling and producing operations hereunder may also be suspended while the price offered generally to producers in the same vicinity for oil of the quality produced from said land is seventy-five (75) cents or less per barrel at the well, or when there is no available market for the same at the well.

8-a. If oil is found in paying quantities at a depth greater than 10,000 feet from the surface of

Exhibit No. 7—(Continued)

said land, then in that event, the number of wells to be drilled on said leased premises shall be two (2).

9. If the Lessee shall complete a well or wells on said land which shall fail to produce oil in paying quantities but which produces gas in paying quantities, the Lessee, shall either sell so much of said gas as it may be able to find a market for, and pay the Lessor the royalty provided herein on the volume of gas so sold, or Lessee may, if it so elects, suspend the operation of such gas well or wells from time to time and during the period of such suspension pay or tender to the Lessor as rental monthly in advance, a sum equal to One Dollar (\$1.00) per acre for so much of the acreage then held under this lease, such rental to continue until producing operations are resumed and royalties are paid to the Lessor for gas sold as above provided. It is further understood and agreed that if the Lessee shall complete a well which shall fail to produce oil in paying quantities, but which produces gas in paying quantities, it shall not be obliged to conduct any further drilling operations on said land (except the drilling of offset wells as hereinafter provided) unless and until, in its judgment, the drilling of such additional wells under the provision of this lease is warranted in view of existing or anticipated market requirements.

10. If it should hereafter appear that the Lessor at the time of making this lease owns a less interest

Exhibit No. 7—(Continued)

in the leased land than the fee simple estate or the entire interest in the oil and gas under said land, then the rentals and royalties accruing hereunder shall be paid to the Lessor in the proportion which his interest bears to the entire fee simple estate or to the entire estate in said oil and gas.

11. There is hereby expressly reserved to the Lessor, and as well to the Lessee, the right and privilege to convey, transfer or assign in whole or in part its interest in this lease or in the leased premises or in the oil and/or gas therein or produced therefrom, but if the Lessor shall sell or transfer any part or parts of the leased premises or any interest in the oil and/or gas under any part or parts thereof the Lessee's drilling obligations shall not thereby be altered, increased or enlarged, but the Lessee may continue to operate the leased premises and pay and settle rents and royalties as an entirety.

12. In the event that a well is drilled upon adjoining property within 250 feet of the exterior limits of any land at the time embraced in this lease and oil or gas is produced therefrom in paying quantities, and the drilling requirements as specified in paragraph 8 hereof are not fully complied with, and the owner of such well shall operate the same and market the oil or gas produced therefrom, then the lessee agrees to offset such well by the commencement of drilling operations within ninety days after it is ascertained that the production of oil or gas from such well is in paying quantities

Exhibit No. 7—(Continued)

that the operator thereof is then producing and marketing oil or gas therefrom. For the purpose of satisfying obligations hereunder such offset well or wells shall be considered as other wells required to be drilled hereunder.

13. The obligations of the Lessee hereunder shall be suspended while the Lessee is prevented from complying therewith, in whole or in part, by strikes, lockouts, action of the elements, accidents, rules and regulations of any Federal, State, Municipal or other governmental agency, or other matters or conditions beyond the control of the Lessee, whether similar to the matters or conditions herein specifically enumerated or not.

14. Water produced by the Lessee but not used by it in its operations hereunder, may be used by the Lessor for surface operations on said land.

15. The Lessee shall pay all taxes on its improvements and all taxes on its oil stored on the leased premises on the first Monday of March in each year, and seven-eighths of the taxes levied and assessed against the petroleum mineral rights. Lessor agrees to pay all taxes levied and assessed against the land as such and one-eighths of the taxes levied and assessed against the petroleum mineral rights. In the event the State, United States or any municipality levies a severance or gross production tax on the oil produced hereunder, then and in that event the Lessee shall pay seven-eighths of said tax and Lessor shall pay one-eighths of said tax.

Exhibit No. 7—(Continued)

16. The Lessee agrees not to drill any well on said land within one hundred (100) feet of the now existing buildings thereon without the written consent of the Lessor. The Lessee agrees to pay all damages directly occasioned by its operations to crops on said land.

17. The Lessor may at all reasonable times examine said land, the work done and in progress thereon, and the production therefrom, and may inspect the books kept by the Lessee in relation to the production from said land, to ascertain the production and the amount saved and sold therefrom. The Lessee agrees, on written request, to furnish to the Lessor copies of logs of all wells drilled by the Lessee on said land. [54]

18. All the labor to be performed and materials to be furnished in the operations of the Lessee hereunder shall be at the cost and expense of the Lessee, and the Lessor shall not be chargeable with, or liable for, any part thereof; and the Lessee shall protect said land against liens of every character arising from its operations thereon.

19. Upon the written request of the Lessor, the Lessee agrees to lay all pipe lines which it constructs through cultivated fields, below plow depth, and upon similar request agrees to fence all sump holes or other excavations to safeguard livestock on said land.

20. The Lessee shall have the right at any time to remove from said land all machinery, rigs, pip-

Exhibit No. 7—(Continued)

ing, casing, pumping stations and other property and improvements belonging to or furnished by the Lessee, provided that such removal shall be completed within a reasonable time after the termination of this lease. Lessee agrees after termination of this lease to fill all sump holes and other excavations made by it.

21. If royalty oil is payable in cash, Lessee may deduct therefrom a proportionate part of the cost of treating unmerchantable oil produced from said premises to render same merchantable. In the event such oil is not treated on the leased premises, Lessor's cash royalty shall also bear a corresponding proportionate part of the cost of transporting the oil to the treating plant. Nothing herein contained shall be construed as obligating Lessee to treat oil produced from the herein described premises. If Lessor shall elect to receive royalty oil in kind, such royalty oil shall be of the same quality as that removed from the leased premises for Lessee's own account, and if Lessee's own oil shall be treated before such removal, Lessor's oil will be treated therewith before delivery to Lessor and Lessor in such event will pay a proportionate part of the cost of treatment.

22. Upon violation of any of the terms or conditions of this lease by the Lessee and the failure to begin to remedy the same within 90 days after written notice from the Lessor so to do, then, at

Exhibit No. 7—(Continued)

the option of the Lessor, this lease shall forthwith cease and terminate, and all rights of the Lessee in and to said land be at an end, save and excepting 20 acres surrounding each well producing or being drilled and in respect to which Lessee shall not be in default, and saving and excepting rights-of-way necessary for Lessee's operations, provided, however, that the Lessee may at any time after such default, and upon payment of the sum of Ten Dollars (\$10.00) to the Lessor as and for fixed and liquidated damages quitclaim to the Lessor all of the right, title and interest of Lessee in and to the leased lands in respect to which it has made default, and thereupon all rights and obligations of the parties hereto one to the other shall thereupon cease and terminate as to the premises quitclaimed.

23. All royalties and rents payable in money hereunder may be paid to the Lessor by mailing or delivering a check therefor to Bank of America N. T. & S. A. Bank at Bakersfield, Calif., its successors and assigns, herein designated by the Lessor as depositary, the Lessor hereby granting to said depositary full power and authority on behalf of the Lessor, his heirs, executors, administrators, successors and assigns, to collect and receipt for all sums of money due and payable from the Lessee to the Lessor hereunder. No change in the ownership of the land or minerals covered by this lease, and no assignment of rents or royalties shall be bind-

Exhibit No. 7—(Continued)

ing on the Lessee until it has been furnished with satisfactory written evidence thereof.

24. Lessor hereby warrants and agrees to defend the title to the land herein described, and agrees that the Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied or assessed on or against the above described land; and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax, or other lien, any royalty or rentals accruing hereunder.

25. If and when any oil produced from the demised premises shall for any reason be unmarketable at the well at the price mentioned in paragraph 8 hereof, the Lessor agrees in such case to take and receive his royalty in kind, and should he fail or refuse so to do, then the Lessee may sell the same at the best price obtainable, but not less than the price which the Lessee may be receiving for its own oil of the same quality.

26. The words "drilling operations" as used in this lease shall be held to mean any work or actual operations undertaken or commenced in good faith for the purpose of carrying out any of the rights, privileges or duties of the Lessee under this lease, followed diligently and in due course by the construction of a derrick and other necessary structures for the drilling of an oil or gas well, and by the actual operation of drilling in the ground.

Exhibit No. 7—(Continued)

27. On the expiration or sooner termination of this lease, Lessee shall quietly and peaceably surrender possession of the premises to Lessor and deliver to him a good and sufficient quitclaim deed, and so far as practicable cover all sump holes and excavations made by Lessee. Before removing the casing from any abandoned well Lessee shall notify Lessor of the intention so to do, and if Lessor within five (5) days thereafter shall inform Lessee in writing of Lessor's desire to convert such well into a water well, and for that purpose to retain and purchase casing therein, Lessee will leave therein such amount of casing as Lessor may require for said purpose, provided such procedure is lawful and will not violate any rule or order of any official, commission or authority then having jurisdiction in such matters, and provided further that Lessor pay to Lessee fifty (50) per cent of the original cost of the casing on the ground.

28. Lessee may at any time quitclaim this lease in its entirety or as to part of the acreage covered thereby, with the privilege of retaining twenty (20) acres surrounding each producing or drilling well, and thereupon Lessee shall be released from all further obligations and duties as to the area so quitclaimed, and all rentals and drilling requirements shall be reduced pro rata. All lands quitclaimed shall remain subject to the easements and rights-of-way hereinabove provided for. Except as so provided, full right to the land so quitclaimed shall

Exhibit No. 7—(Continued)

revest in Lessor, free and clear of all claims of Lessee, except that Lessor, his successors or assigns, shall not drill any well on the land quitclaimed within three hundred (300) feet of any producing or drilling well retained by Lessee.

29. If this lease shall be assigned to a particular part or as to particular parts of the leased premises, such division or severance of the lease shall constitute and create separate and distinct holdings under the lease of and according to the several portions of the leased premises as thus divided, and the holder or owner of each such portion of the leased premises shall be required to comply with and perform the Lessee's obligations under this lease for, and only to the extent of, his portion of the leased area, and performance thereof shall be sufficient to protect and validate this lease as to his portion of the leased area notwithstanding the obligations of the lease may not be fully performed as to another part or portion thereof.

30. This lease and all its terms, conditions and stipulations shall extend to and be binding upon the heirs, executors, administrators, grantees, successors and assigns of the parties hereto.

31. Irrespective of anything to the contrary herein contained it is expressly understood and agreed by and between Lessor and Lessee that in the event drilling operations on the first well are not commenced within the time and/or times herein expressed that said lease shall terminate without

Exhibit No. 7—(Continued)

liability of any kind and/or character on the part of Lessee.

32. It is mutually agreed and understood that the terms, conditions, covenants and warranties herein expressed constitute the complete agreement of the parties hereto and that there are no terms, conditions, covenants and/or warranties either expressed or implied other than those in this said Indenture of Lease contained.

In Witness Whereof, the parties hereto have caused this agreement to be duly executed as of the date first hereinabove written.

L. G. HELM

ETTA HELM

Lessor

SIGNAL OIL AND GAS
COMPANY

[Seal]

R. H. GREEN, V. P.

F. R. BACON, Asst Sect.

Lessee

Witness:

.....
.....

State of California,
County of Los Angeles—ss.

On This 27th day of May, A. D., 1938 before me, Lona C. Carr, a Notary Public in and for the said County and State, personally appeared R. H. Green, known to me to be the Vice President, and

Exhibit No. 7—(Continued)

F. R. Bacon, known to me to be the Assistant Secretary Signal Oil and Gas Company the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the Corporation herein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

LONA C. CARR

Notary Public in and for said
County and State. [55]

State of California,
County of Kern—ss.

On this 23rd day of May, in the year nineteen hundred and thirty-eight, before me, M. J. Davis, a Notary Public in and for the County of Kern, State of California, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal]

M. J. DAVIS

Notary Public in and for the County of Kern, State
of California.

Exhibit No. 7—(Continued)

State of California,

County of..... —ss.

On this day of, A. D. 19....
 before me,, a Notary Public in and for
 the County of, State of California,
 residing therein, duly commissioned and sworn, per-
 sonally appeared known
 to me to be the of the
 the that executed the within instru-
 ment, known to me to be the persons who executed
 the within instrument on behalf of the
 therein named, and acknowledged to me that such
 executed the same.

In Witness Whereof, I have hereunto set my
 hand and affixed my official seal the day and year
 in this certificate first above written.

.....
 Notary Public in and for said
 County and State. [56]

EXHIBIT No. 8

(Copy)

No.

OIL AND GAS LEASE

From

.....
.....

Lessor.

To

Union Oil Company
of California

Lessee.

Recorded at Request of

.....
.....

At.....min. past.....M. in
Book.....of Official Rec-
ords, Pageof the
Records of.....
County.

.....
Recorder.

By

Deputy Recorder.

When recorded return to

Land Department

Union Oil Co. of

California

1117 Union Oil Building

Los Angeles, Calif.

Exhibit No. 8—(Continued)

OIL AND GAS LEASE

This Lease and Agreement, made and entered into this 24th day of May, 1938, by and between L. G. Helm and Etta Helm, his wife, hereinafter called Lessor, (whether one or more), and Union Oil Company of California, a California corporation, hereinafter called Lessee:

Witnesseth: That Lessor, for and in consideration of One Dollar (\$1.00) and other valuable consideration in hand paid, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of Lessee to be kept, and performed, by these presents does grant, demise, lease and let unto said Lessee exclusively, for the purpose of exploring, mining, drilling and operating for oil, gas and other hydrocarbon substances, and taking, treating, storing, removing and disposing of same, with the right for such purposes to the free use of oil, gas and water from said land, but not from Lessor's water wells, and the right to place and maintain on said premises tanks, houses for employees, oil and gas treating plants and all other structures and works (excepting refinery) as may be necessary or convenient in its operations, together with rights of way, easements and servitudes for pipe lines, power lines, telephone and telegraph lines, with the right of removing, either during or after the term hereof, any and all improvements placed or erected by Lessee,

Exhibit No. 8—(Continued)

including casing in wells, on that certain tract of land situated in the County of Kern, State of California, described as follows, to-wit:

The South half of the Southeast quarter (S $\frac{1}{2}$ of SE $\frac{1}{4}$) of Section 4, Township 25 South, Range 22 East of the M. D. B. & M.,

and containing 80 acres, more or less.

To Have and to Hold the same for a term of twenty (20) years from and after the date hereof, and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom in quantities deemed paying by Lessee.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty the equal one-eighth ($\frac{1}{8}$) part of the value of all oil removed from the leased premises, after making the customary deduction for temperature, water and b. s., at the posted market price of the major oil companies in the district in which the premises are located for oil of like gravity the day the oil is run into pipe line or storage tanks, and in this event, settlement shall be made by Lessee on or before the 20th day of each month for accrued royalty for the preceding calendar month; or, at Lessor's option, exercised not more than once in any one calendar year, upon sixty (60) days' previous written notice, deliver into Lessor's tanks on the leased premises

Exhibit No. 8—(Continued)

or at mouth of well to pipe line designated by Lessor, free of cost, Lessor's one-eighth ($\frac{1}{8}$) part of said oil. Provided that in determining the gravity, quality and quantity of said oil, the methods and practices which are usual and customary among major oil purchasing companies shall be followed, and the customary temperature corrections and deductions for water and other foreign substances shall be made; provided that in event Lessee shall treat its own portion of said oil for the purpose of making the same marketable, it shall also treat said royalty oil and Lessor shall pay a reasonable price for treating.

2. For gas not used in its operations hereunder and/or not treated as provided in Section 3, Lessee shall pay Lessor a royalty of one-eighth ($\frac{1}{8}$) of the net proceeds derived from the sale thereof, or of the value at the field market price of same when used by Lessee in other operations, and in this event settlement shall be made by Lessee on or before the 20th day of each calendar month for gas sold or so used in other operations during the preceding month, but nothing in this agreement contained shall require Lessee to save or market gas from said lands unless there shall be a surplus above lease requirements and a market at the well for same.

3. Lessee shall have the right to treat or cause to be treated all or any portion of the gas produced from said premises, for the purpose of extracting the gasoline or other content thereof. In the event

Exhibit No. 8—(Continued)

that any such gas shall be so treated by Lessee itself, Lessor shall receive a royalty of one-eighth ($\frac{1}{8}$) of one-third ($\frac{1}{3}$) of the value of the marketable casinghead gasoline or other content extracted from such gas, as determined by the records of Lessee. In the event that any such gas shall be so treated by a third party, and Lessee shall have the right to contract for the treatment of such gas, in its discretion, then Lessor shall receive a royalty of one-eighth ($\frac{1}{8}$) of the value of the royalty paid to Lessee by such third party for the privilege of treating such gas. For the purpose of accounting hereunder, the value of Lessor's royalty shall be based upon the wholesale price freely and currently offered and paid by Lessee for gasoline or other content of the same quality, in the same quantities and under the same terms of delivery in the field where the demised land is located, at the time the gasoline or other content herein referred to is run from treating plant. Payment shall be made by Lessee on or before the 20th day of each month for Lessor's royalty hereunder on all such gasoline or other content produced and delivered during the preceding calendar month. Lessor shall be entitled to one-eighth ($\frac{1}{8}$) of the net proceeds received by Lessee from the sale of any dry gas remaining after the same shall have been treated and not used in its operations hereunder. It is understood that there may be commingled with said gas so to be treated gas produced from other properties.

Exhibit No. 8—(Continued)

and that the apportionment of the gasoline or other content extracted will be based upon the respective quantities of gas metered and respective qualities tested, in such manner as may seem proper to Lessee, and that the apportionment of the dry gas residuum will be based upon the customary practice in the industry.

4. This lease shall terminate as to all rights and obligations contained hereunder unless Lessee shall on or before Twenty (20) years from the date hereof commence operations for the drilling of a well for oil or gas on the above described land, and prosecute the drilling thereof with due diligence and dispatch until a depth of Nine Thousand (9,000) feet has been reached, unless oil or gas is found in paying quantities at a lesser depth, or unless formations are encountered at a lesser depth which would indicate to Lessee's geologist that further drilling would be unsuccessful, or unless mechanical difficulties are encountered in the prosecution of the drilling of said well; in the event such formation or mechanical difficulties are encountered, Lessee may abandon said well, but this lease shall continue in full force and effect provided operations for the drilling of a new well is commenced within ninety (90) days from the abandonment of the first well and thereafter drilled diligently as hereinabove provided. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, Lessee shall drill a dry hole on this land, this

Exhibit No. 8—(Continued)

lease shall terminate unless operations for the drilling of a new well shall be commenced within ninety (90) days from the date of the abandonment of said dry hole, and thereafter be drilled diligently by Lessee. [57]

5. If operations for the drilling of a well for oil or gas be not commenced on said land on or before Ten (10) years from this date, this lease shall terminate as to both parties, unless Lessee shall on or before Ten (10) years from this date pay or tender to Lessor or for Lessor's credit in the Anglo California National Bank at Bakersfield, California, or its successors, the sum of Thirty Dollars (\$30.00) per acre, which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of Ten (10) years. All payments or tenders may be made by check or draft of Lessee mailed or delivered on or before the rental paying date. It is the intent hereof that rentals shall not be paid except for the purpose of deferring the commencement of drilling operations as herein provided.

6. Within ninety (90) days after discovery of oil in paying quantities in any of the wells herein provided for on the above described premises, Lessee agrees to commence operations for the drilling of another well, and thereafter continuously operate at least one (1) string of tools, allowing ninety (90) days between the completion or abandonment of one well and the commencement of the next succeeding well until one (1) well has been

Exhibit No. 8—(Continued)

drilled to each forty (40) acres, or a total of two (2) wells; provided, however, that if and when developments on said land shall indicate that oil cannot be produced therefrom in paying quantities but that gas can be produced in paying quantities, the obligation of Lessee hereunder shall be to drill only one (1) well to each Eighty (80) acres. The number of oil or gas wells to be an average regardless of where drilled. Nothing herein shall be considered to limit the number of wells which Lessee may drill should it so elect in excess of the number hereinabove specified.

7. All rights hereby granted to Lessee (including the right to drill additional wells) shall continue after expiration of said twenty-year term of this lease as to the premises, or portion thereof then subject to this lease, as long as oil or gas or other hydrocarbon substance is produced therefrom in quantities deemed paying by Lessee, except as to such rights as may have been quitclaimed by Lessee or may have been terminated under the provisions of Section 18, hereof.

8. In the event of discovery of oil in any well on adjacent properties within three hundred thirty (330) feet of the boundary line of the above described premises, and the same produces oil in paying quantities for thirty (30) consecutive days and a well offsetting same is not already drilled, or being drilled, then in that event Lessee shall within sixty (60) days after completion of said well to be offset, commence operations for the drilling of a well to offset such

Exhibit No. 8—(Continued)

producing well and drill the same diligently to the strata from which oil is being produced on the adjacent property. Offset wells shall be located within three hundred (300) feet of the boundary line separating the properties, and within three hundred (300) feet of a line drawn from the well to be offset across said boundary line at right angles. "Paying quantities" as used in this Section shall be considered as such production as will be sufficient to reasonably assure the lessee a profit over and above the cost of drilling and producing such an offset well.

9. After the drilling of the first well herein required, there shall be no obligation upon the part of Lessee to drill, pump or operate said premises, except offset wells when wells offset are being operated, so long as the price of oil of the quality and gravity produced on said property shall be Seventy-five (75) cents or less per barrel at the well.

10. Notwithstanding anything in this lease contained to the contrary, it is expressly understood and agreed that the obligations imposed upon Lessee may be suspended so long as Lessee is prevented from performing such obligations by the elements, accidents, strikes, lockouts, riots, delays in transportation, inability to secure materials in the open market or other causes beyond the reasonable control of Lessee, or compliance by Lessee with applicable Federal or State regulations or orders with respect to the time, order, location and/or manner of drilling wells, or the depth to which

Exhibit No. 8—(Continued)

wells may be drilled, or the operation of wells, or with proration or curtailment regulations of authorities constituted by law, or by voluntary agreement of producers representing a majority of the production in the district in which said wells are located.

11. Lessee shall carry on all operations in a careful, workmanlike manner and in accordance with the laws of the State of California. Lessee shall keep full records of its operations in the drilling for and production of oil and of the production and sale of gas and casinghead gasoline from said property, and such records and operations of said property shall be open at all reasonable times to the inspection of Lessor or Lessor's agent, and Lessee shall furnish to Lessor or Lessor's agent a monthly statement of the production from said premises for the preceding calendar month, which statement shall be made between the parties on or about the 20th day of each calendar month for the preceding calendar month, and shall be deemed an account stated unless specific objection be made thereto within ninety (90) days after receipt thereof by Lessor or Lessor's agent. Whenever in writing requested by Lessor, Lessee shall furnish to Lessor a copy of the logs of all wells completed and tested on said property.

Lessor will from time to time fully inspect and become familiar with operations hereunder and the ordinary and usual methods employed by Lessee

Exhibit No. 8—(Continued)

in gauging and testing the petroleum oil produced from the demised land and ascertaining and determining the amount, cuts for water and b. s., deductions for temperature, and the gravity of said oil, and Lessee shall furnish Lessor or Lessor's agent full opportunity to make all inspections desired by Lessor.

11a. The Lessee agrees, subject to the provisions hereof, to operate each completed oil well with reasonable diligence and in accordance with good oil field practice so long as such well shall produce oil in quantities deemed paying quantities by the Lessee while this lease is in force as to the portion of said land on which such well is situated.

12. Lessor shall have the right to the use of the surface of said land for agricultural and grazing purposes to the extent which will not interfere with the proper operation of the lease for oil or gas. Lessee agrees to conduct its operations so as to interfere as little as is consistent with the economical operation of the property for oil or gas with use of the land for agricultural or grazing purposes. Whenever required by Lessor in writing, Lessee shall fence all sump holes or other openings to safeguard live stock on said land.

Lessee may, either before or after the commencement of drilling operations hereunder, enter upon the herein demised land at any time for the purpose of conducting geological and geophysical work and the drilling of holes for such geological and geophysical information.

Exhibit No. 8—(Continued)

13. Lessee shall pay the surface owner or surface tenant for all damage to crops and trees existing at time of commencement of drilling hereunder, to live stock, fences, pipe lines, canals, buildings and other improvements caused by its operations under this lease. In event the parties hereto are unable to agree on the amount of such damage, then the same shall be left to arbitration conducted in accordance with the arbitration laws of the State.

14. Lessee agrees that no well shall be drilled nearer than one hundred fifty (150) feet of any dwelling house now on said premises without the written consent of Lessor. When requested by Lessor, Lessee shall bury its pipe lines below plow depth.

15. Lessee may at any time and from time to time, either before or after discovery of oil on the demised premises, quitclaim this lease in its entirety, or as to part of the acreage covered hereby, and thereupon Lessee shall be released from all further obligations as to the land so quitclaimed, and all rentals and drilling obligations as set forth in this lease shall be reduced pro rata according to the acreage so quitclaimed by Lessee; it being particularly understood, however, that all lands so quitclaimed shall remain subject to—and Lessee shall have the right to use and enjoy—such rights of way and easements as may be necessary or convenient for Lessee's operations on the land retained by it. Except as herein provided, full right to such quit-

Exhibit No. 8—(Continued)

claimed land shall revert in Lessor free and clear of all claims of Lessee except that Lessor and Lessor's successors or assigns shall not drill any well on the said land within six hundred (600) feet of any producing well retained by Lessee, or well then being drilled which subsequently is completed as a producing well.

16. Lessee shall pay all taxes levied on its improvements and personal property and all taxes levied on its oil stored on the leased premises. Lessor shall pay all taxes and assessments on the surface value of the land and on all other improvements and personal property thereon, also all taxes levied on any oil which Lessor may have stored on the said leased premises. All increase in the taxes on the demised premises or, if Lessee shall have quit-claimed a portion of the demised premises, on such part of the demised premises as is retained by Lessee, caused by or resulting from the discovery or production of oil, gas or other substances herein mentioned thereon and therefrom, whether assessed upon said land or as mineral rights or otherwise, and charges [58] and/or taxes of whatsoever kind levied or collected by reason of the production, sale or removal of oil, gas or other substances from the demised premises shall be borne by the parties hereto in the proportion of seven-eighths ($7/8$) by Lessee, and one-eighth ($1/8$) by Lessor. In the event that Lessor shall fail to pay any such taxes, assessments or charges so required to be paid by

Exhibit No. 8—(Continued)

Lessor, Lessee may at its option pay the same; or in the event any of the taxes or assessments to be paid by Lessor are assessed against and/or paid by Lessee, then in either of such events Lessee may reimburse itself for such taxes or assessments so paid by it from any royalties or rentals accruing hereunder.

17. On the expiration of this lease, or its sooner termination, Lessee shall quietly and peacefully surrender possession of the premises to Lessor and deliver to Lessor a good and sufficient quitclaim deed, and shall so far as practicable cover all sump holes and excavations made by it. In case of abandonment of any well by Lessee, should Lessor desire to retain the same, Lessor may notify Lessee to that effect and thereupon Lessee shall leave such casing in the well as Lessor may require, and Lessor shall pay to Lessee fifty per cent (50%) of the original cost of such casing on the ground.

18. In case of default in performance by Lessee of any of its obligations under this lease, and the failure to remedy or to begin in good faith to remedy the same within sixty (60) days after written notice from Lessor so to do, specifying the particulars in which it is claimed Lessee is in default, then at the option of Lessor, all rights of Lessee under this lease shall forthwith cease and terminate save and except that Lessee shall have the right to retain all wells then producing or in the course of drilling, as to which Lessee is not in de-

Exhibit No. 8—(Continued)

fault, with full right to operate, retain, produce, redrill, deepen and properly maintain all such wells subject to all provisions of this lease, and to use as much of said land as may be necessary or convenient for Lessee's operations of such wells as long as said wells respectively shall produce oil or gas in quantities deemed paying by Lessee, and Lessor shall not drill or permit to be drilled any well on said premises within Six Hundred (600) feet of any well so retained by Lessee. Forfeiture of rights as in this section provided shall be the exclusive remedy of Lessor for breach of obligations, or any thereof by Lessee excepting the obligation of Lessee to make full payment of royalties as in this lease provided. It is understood and agreed that the right of Lessor to declare forfeiture and termination of this lease for failure to commence operations for the drilling of the first well as provided in Sections 4 and 5 hereof, shall be absolute and no period of grace shall be granted Lessee.

19. All work done on the land by Lessee shall be at Lessee's sole cost and expense, and Lessee agrees to protect said land and Lessor from claims of contractors, laborers, or materialmen, and Lessor may post and keep posted on said lands such notices as Lessor may desire to protect said lands against liens.

20. Lessor hereby agrees to defend the title to the land herein described and agrees that Lessee, at its option, may pay and discharge any taxes,

Exhibit No. 8—(Continued)

mortgages or other liens existing, levied or assessed on or against the above described lands, and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or rentals accruing hereunder.

21. If the estate of either party hereto is assigned, (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to its successors and assigns, but no change of ownership in the land or in the rentals or royalties shall be binding on Lessee until Lessee has been furnished with written notice of such transfer or assignment, together with a certified copy of the instruments of transfer or assignment. Provided, however, that all payments or royalties due Lessor hereunder shall be payable as a whole to Lessor or Lessor's agent, (as provided in Section 23 hereof), and Lessee shall not be responsible for the division of the same in the event of any change of ownership in Lessor's interest hereunder.

22. "Drilling operations," or "Operations for the drilling of a well," as used in this lease is defined to mean the placing of material upon the demised premises for the construction of a derrick for the drilling of an oil or gas well, followed diligently by the construction of such derrick and by actual drilling in the ground.

23. All money payments due Lessor hereunder

Exhibit No. 8—(Continued)

shall be made for the account of and credit of Lessor to Anglo California National Bank at Bakersfield, California, or to such other person, bank or trust company in California as Lessor may designate to receive same for Lessor. If the interest of Lessor or a portion thereof is transferred and becomes vested in two or more parties, then such parties or a majority thereof in interest shall designate to Lessee in writing, accompanied by the acceptance of the payee, a bank or trust company in California to receive and distribute all such payments, and the Lessee upon tender of payment to same, shall be relieved from all obligations or responsibilities as to the proper distribution of the same. The action of the holders of the majority in ownership of Lessor's interest hereunder in instructing Lessee as to the bank or trust company to which payments are to be tendered or made, shall be binding upon all parties and any such majority is hereby authorized to designate or change the designated payee and to make the necessary arrangements with the payee for the distribution of funds. Lessee is hereby authorized to withhold the making of any payments until the provisions of this section are complied with.

24. Any notice or statement herein required or permitted to be given or furnished by one party to the other shall be in writing. Delivery of such written notice or statement to Lessor shall be made by depositing in the United States registered mail such written notice or statement addressed to Les-

Exhibit No. 8—(Continued)

sor at 1413 17th Street, Bakersfield, California, and delivery of such written notice or statement to Lessee shall be made by depositing in the United States registered mail such written notice or statement addressed to Lessee at Union Oil Building, Los Angeles, California. Either party hereto may by written notice change its address to any other location.

25. This lease and agreement shall be obligatory upon and shall inure to the benefit of the assigns and successors in interest of the respective parties hereto.

26. The entire agreement between the parties is embodied in this lease, and no covenant or agreement other than those set forth in this lease shall be obligatory upon either of the parties hereto except insofar as this lease may subsequently be modified by written agreement of the parties.

In Witness Whereof, the parties hereto have caused this lease to be executed the day and year first above written.

L. G. HELM

ETTA HELM

Lessor

UNION OIL COMPANY OF
CALIFORNIA

Lessee

By W. W. ORCUTT

Vice President

By W. R. EDWARDS

Secretary, [59]

Exhibit No. 8—(Continued)

General Form

State of California,
County of Kern—ss.

On this 25th day of May, A. D. 1938, before me, M. J. Davis, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

M. J. DAVIS,

Notary Public in and for said County and State.

(2nd General Form Verification and Corporation Form Verification not filled in.)

State of California,
County of Los Angeles—ss.

On this 24th day of May, A. D. 1938, before me, Holt R. Gregory, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared W. W. Orcutt, known to me to be the Vice President, and W. R. Edwards, known to me to be the Secretary of Union Oil Company of California the Corporation that executed the within Instrument, known to

Exhibit No. 8—(Continued)

me to be the persons who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

HOLT R. GREGORY,

Notary Public in and for said County and State.

My Commission Expires August 14, 1941. [60]

EXHIBIT No. 9

(Copy)

No.

OIL AND GAS
LEASE

from

.....
.....

Lessor,

To

UNION OIL COMPANY
OF CALIFORNIA

Lessee.

Recorded at Request of

.....
.....

At.....min. past.....M. in
Book.....of Official Records, Page
.....of the Records of.....
County.

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.....

Recorder.

By

Deputy Recorder.

When recorded return to

LAND DEPARTMENT
UNION OIL CO. OF CALIFORNIA
1117 Union Oil Building
Los Angeles, Calif.

Exhibit No. 9—(Continued)

OIL AND GAS LEASE

This Lease and Agreement, made and entered into this 24th day of May, 1938, by and between L. G. Helm and Etta Helm, his wife, hereinafter called Lessor, (whether one or more), and Union Oil Company of California, a California corporation, hereinafter called Lessee;

Witnesseth: That Lessor, for and in consideration of One Dollar (\$1.00) and other valuable consideration in hand paid, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of Lessee to be kept and performed, by these presents does grant, demise, lease and let unto said Lessee exclusively, for the purpose of exploring, mining, drilling and operating for oil, gas and other hydrocarbon substances, and taking, treating, storing, removing and disposing of same, with the right for such purposes to the free use of oil, gas and water from said land, but not from Lessor's water wells, and the right to place and maintain on said premises tanks, houses for employees, oil and gas treating plants and all other structures and works (excepting refinery) as may be necessary or convenient in its operations, together with rights of way, easements and servitudes for pipe lines, power lines, telephone and telegraph lines, with the right of removing, either during or after the term hereof, any and all improvements placed or erected by Lessee, including

Exhibit No. 9—(Continued)

casing in wells, on that certain tract of land situated in the County of Kings, State of California, described as follows, to-wit:

The South half of the Northwest quarter ($S\frac{1}{2}$ of $NW\frac{1}{4}$) of Section 32, the West half of the Southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$) of Section 33; the West half of the Southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$) of Section 34; all in Township 26 South, Range 22 East of the M. D. B. & M.,

and containing 240 acres, more or less.

To Have and to Hold the same for a term of twenty (20) years from and after the date hereof, and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom in quantities deemed paying by Lessee.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty the equal one-eighth ($1/8$) part of the value of all oil removed from the leased premises, after making the customary deduction for temperature, water and b.s., at the posted market price of the major oil companies in the district in which the premises are located for oil of like gravity the day the oil is run into pipe line or storage tanks, and in this event, settlement shall be made by Lessee on or before the 20th day of each month for accrued royalty for the preceding calendar month; or, at Lessor's op-

Exhibit No. 9—(Continued)

tion, exercised not more than once in any one calendar year, upon sixty (60) days' previous written notice, deliver into Lessor's tanks on the leased premises or at mouth of well to pipe line designated by Lessor, free of cost, Lessor's one-eighth ($1/8$) part of said oil. Provided that in determining the gravity, quality and quantity of said oil, the methods and practices which are usual and customary among major oil purchasing companies shall be followed, and the customary temperature corrections and deductions for water and other foreign substances shall be made; provided that in event Lessee shall treat its own portion of said oil for the purpose of making the same marketable, it shall also treat said royalty oil and Lessor shall pay a reasonable price for treating.

2. For gas not used in its operations hereunder and/or not treated as provided in Section 3, Lessee shall pay Lessor a royalty of one-eighth ($1/8$) of the net proceeds derived from the sale thereof, or of the value at the field market price of same when used by Lessee in other operations, and in this event settlement shall be made by Lessee on or before the 20th day of each calendar month for gas sold or so used in other operations during the preceding month, but nothing in this agreement contained shall require Lessee to save or market gas from said lands, unless there shall be a surplus above lease requirements and a market at the well for same.

Exhibit No. 9—(Continued)

3. Lessee shall have the right to treat or cause to be treated all or any portion of the gas produced from said premises, for the purpose of extracting the gasoline or other content thereof. In the event that any such gas shall be so treated by Lessee itself, Lessor shall receive a royalty of one-eighth ($1/8$) of one-third ($1/3$) of the value of the marketable casinghead gasoline or other content extracted from such gas, as determined by the records of Lessee. In the event that any such gas shall be so treated by a third party, and Lessee shall have the right to contract for the treatment of such gas, in its discretion, then Lessor shall receive a royalty of one-eighth ($1/8$) of the value of the royalty paid to Lessee by such third party for the privilege of treating such gas. For the purpose of accounting hereunder, the value of Lessor's royalty shall be based upon the wholesale price freely and currently offered and paid by Lessee for gasoline or other content of the same quality, in the same quantities and under the same terms of delivery in the field where the demised land is located, at the time the gasoline or other content herein referred to is run from treating plant. Payment shall be made by Lessee on or before the 20th day of each month for Lessor's royalty hereunder on all such gasoline or other content produced and delivered during the preceding calendar month. Lessor shall be entitled to one-eighth ($1/8$) of the net proceeds received by Lessee from the sale of any dry gas

Exhibit No. 9—(Continued)

remaining after the same shall have been treated and not used in its operations hereunder. It is understood that there may be commingled with said gas so to be treated gas produced from other properties, and that the apportionment of the gasoline or other content extracted will be based upon the respective quantities of gas metered and respective qualities tested, in such manner as may seem proper to Lessee, and that the apportionment of the dry gas residuum will be based upon the customary practice in the industry.

4. This lease shall terminate as to all rights and obligations contained hereunder unless Lessee shall on or before Twenty (20) years from the date hereof commence operations for the drilling of a well for oil or gas on the above described land, and prosecute the drilling thereof with due diligence and dispatch until a depth of Nine Thousand (9,000) feet has been reached, unless oil or gas is found in paying quantities at a lesser depth, or unless formations are encountered at a lesser depth which would indicate to Lessee's geologist that further drilling would be unsuccessful, or unless mechanical difficulties are encountered in the prosecution of the drilling of said well in the event such formations or mechanical difficulties are encountered, Lessee may abandon said well, but this lease shall continue in full force and effect provided operations for the drilling of a new well is commenced within ninety (90) days from the abandonment of the first well

Exhibit No. 9—(Continued)

and thereafter drilled diligently as hereinabove provided. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, Lessee shall drill a dry hole on this land, this lease shall terminate unless operations for the drilling of a new well shall be commenced within ninety (90) days from the date of the abandonment of said dry hole, and thereafter be drilled diligently by Lessee. [61]

5. If operations for the drilling of a well for oil or gas be not commenced on said land on or before Ten (10) years from this date, this lease shall terminate as to both parties, unless Lessee shall on or before Ten (10) years from this date pay or tender to Lessor or for Lessor's credit in the Anglo California National Bank at Bakersfield, California, or its successors, the sum of Thirty Dollars (\$30.00) per acre, which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of ten (10) years. All payments or tenders may be made by check or draft of Lessee mailed or delivered on or before the rental paying date. It is the intent hereof that rentals shall not be paid except for the purpose of deferring the commencement of drilling operations as herein provided.

6. Within ninety (90) days after discovery of oil in paying quantities in any of the wells herein provided for on the above described premises, Lessee agrees to commence operations for the drilling

Exhibit No. 9—(Continued)

of another well, and thereafter continuously operate at least one (1) string of tools, allowing ninety (90) days between the completion or abandonment of one well and the commencement of the next succeeding well until one (1) well has been drilled to each forty (40) acres, or a total of six (6) wells; provided, however, that if and when developments on said land shall indicate that oil cannot be produced therefrom in paying quantities but that gas can be produced in paying quantities, the obligation of Lessee hereunder shall be to drill only one (1) well to each One Hundred Sixty (160) acres. The number of oil or gas wells to be an average regardless of where drilled. Nothing herein shall be considered to limit the number of wells which Lessee may drill should it so elect in excess of the number hereinabove specified.

7. All rights hereby granted to Lessee (including the right to drill additional wells) shall continue after expiration of said twenty-year term of this lease as to the premises, or portion thereof then subject to this lease, as long as oil or gas or other hydrocarbon substance is produced therefrom in quantities deemed paying by Lessee, except as to such rights as may have been quitclaimed by Lessee or may have been terminated under the provisions of Section 18, hereof.

8. In the event of discovery of oil in any well on adjacent properties within three hundred thirty (330) feet of the boundary line of the above de-

Exhibit No. 9—(Continued)

scribed premises, and the same produces oil in paying quantities for thirty (30) consecutive days and a well offsetting same is not already drilled, or being drilled, then in that event Lessee shall within sixty (60) days after completion of said well to be offset, commence operations for the drilling of a well to offset such producing well and drill the same diligently to the strata from which oil is being produced on the adjacent property. Offset wells shall be located within three hundred (300) feet of the boundary line separating the properties, and within three hundred (300) feet of a line drawn from the well to be offset across said boundary line at right angles. "Paying quantities" as used in this Section shall be considered as such production as will be sufficient to reasonably assure the lessee a profit over and above the cost of drilling and producing such an offset well.

9. After the drilling of the first well herein required, there shall be no obligation upon the part of Lessee to drill, pump or operate said premises, except offset wells when wells offset are being operated, so long as the price of oil of the quality and gravity produced on said property shall be Seventy-five (75) cents or less per barrel at the well.

10. Notwithstanding anything in this lease contained to the contrary, it is expressly understood and agreed that the obligations imposed upon Lessee may be suspended so long as Lessee is prevented from performing such obligations by the elements, acci-

Exhibit No. 9—(Continued)

dents, strikes, lockouts, riots, delays in transportation, inability to secure materials in the open market or other causes beyond the reasonable control of Lessee, or compliance by Lessee with applicable Federal or State regulations or orders with respect to the time, order, location and/or manner of drilling wells, or the depth to which wells may be drilled, or the operation of wells, or with proration or curtailment regulations of authorities constituted by law, or by voluntary agreement of producers representing a majority of the production in the district in which said wells are located.

11. Lessee shall carry on all operations in a careful, workmanlike manner and in accordance with the laws of the State of California. Lessee shall keep full records of its operations in the drilling for and production of oil and of the production and sale of gas and casinghead gasoline from said property, and such records and operations of said property shall be open at all reasonable times to the inspection of Lessor or Lessor's agent, and Lessee shall furnish to Lessor or Lessor's agent a monthly statement of the production from said premises for the preceding month, which statement shall be made between the parties on or about the 20th day of each calendar month for the preceding calendar month, and shall be deemed an account stated unless specific objection be made thereto within ninety (90) days after receipt thereof by Lessor or Lessor's agent. Whenever in writing requested by Lessor,

Exhibit No. 9—(Continued)

Lessee shall furnish to Lessor a copy of the logs of all wells completed and tested on said property.

Lessor will from time to time fully inspect and become familiar with operations hereunder and the ordinary and usual methods employed by Lessee in gauging and testing the petroleum oil produced from the demised land and ascertaining and determining the amount, cuts for water and b. s., deductions for temperature, and the gravity of said oil, and Lessee shall furnish Lessor or Lessor's agents full opportunity to make all inspections desired by Lessor.

11a. The Lessee agrees, subject to the provisions hereof, to operate each completed oil well with reasonable diligence and in accordance with good oil field practice so long as such well shall produce oil in quantities deemed paying quantities by the Lessee while this lease is in force as to the portion of said land on which such well is situated.

12. Lessor shall have the right to the use of the surface of said land for agricultural and grazing purposes to the extent which will not interfere with the proper operation of the lease for oil or gas. Lessee agrees to conduct its operations so as to interfere as little as is consistent with the economical operation of the property for oil or gas with use of the land for agricultural or grazing purposes. Whenever required by Lessor in writing, Lessee shall fence all sump holes or other openings to safeguard live stock on said land.

Exhibit No. 9—(Continued)

Lessee may, either before or after the commencement of drilling operations hereunder, enter upon the herein demised land at any time for the purpose of conducting geological and geophysical work and the drilling of holes for such geological and geophysical information.

13. Lessee shall pay the surface owner or surface tenant for all damage to crops and trees existing at time of commencement of drilling hereunder, to live stock, fences, pipe lines, canals, buildings and other improvements caused by its operations under this lease. In event the parties hereto are unable to agree on the amount of such damage, then the same shall be left to arbitration conducted in accordance with the arbitration laws of the State.

14. Lessee agrees that no well shall be drilled nearer than one hundred fifty (150) feet of any dwelling house now on said premises without the written consent of Lessor. When requested by Lessor, Lessee shall bury its pipe lines below plow depth.

15. Lessee may at any time and from time to time, either before or after discovery of oil on the demised premises, quitclaim this lease in its entirety or as to part of the acreage covered hereby, and thereupon Lessee shall be released from all further obligations as to the land so quitclaimed, and all rentals and drilling obligations as set forth in this lease shall be reduced pro rata according to the acreage so quitclaimed by Lessee; it being par-

Exhibit No. 9—(Continued)

ticularly understood, however, that all lands so quit-claimed shall remain subject to—and Lessee shall have the right to use and enjoy—such rights of way and easements as may be necessary or convenient for Lessee's operations on the land retained by it. Except as herein provided, full right to such quit-claimed land shall revest in Lessor free and clear of all claims of Lessee except that Lessor and Lessor's successors or assigns shall not drill any well on the said land within six hundred (600) feet of any producing well retained by Lessee, or well then being drilled which subsequently is completed as a producing well.

16. Lessee shall pay all taxes levied on its improvements and personal property and all taxes levied on its oil stored on the leased premises. Lessor shall pay all taxes and assessments on the surface value of the land and on all other improvements and personal property thereon, also all taxes levied on any oil which Lessor may have stored on the said leased premises. All increase in the taxes on the demised premises or, if Lessee shall have quit-claimed a portion of the demised premises, on such part of the demised premises as is retained by Lessee, caused by or resulting from the discovery or production of oil, gas or other substances herein mentioned thereon and therefrom, whether assessed upon said land or as mineral rights or otherwise, and charges [62] and/or taxes of whatsoever kind levied or collected by reason of the production, sale

Exhibit No. 9—(Continued)

or removal of oil, gas or other substances from the demised premises shall be borne by the parties hereto in the proportion of Seven-eighths ($7/8$) by Lessee, and one-eighth ($1/8$) by Lessor. In the event that Lessor shall fail to pay any such taxes, assessments or charges so required to be paid by Lessor, Lessee may at its option pay the same; or in the event any of the taxes or assessments to be paid by Lessor are assessed against and/or paid by Lessee, then in either of such events Lessee may reimburse itself for such taxes or assessments so paid by it from any royalties or rentals accruing hereunder.

17. On the expiration of this lease, or its sooner termination, Lessee shall quietly and peacefully surrender possession of the premises to Lessor and deliver to Lessor a good and sufficient quitclaim deed, and shall so far as practicable cover all sump holes and excavations made by it. In case of abandonment of any well by Lessee, should Lessor desire to retain the same, Lessor may notify Lessee to that effect and thereupon Lessee shall leave such casing in the well as Lessor may require, and Lessor shall pay to Lessee fifty per cent (50%) of the original cost of such casing on the ground.

18. In case of default in performance by Lessee of any of its obligations under this lease, and the failure to remedy or to begin in good faith to remedy the same within sixty (60) days after written notice from Lessor so to do, specifying the particulars in which it is claimed Lessee is in de-

Exhibit No. 9—(Continued)

fault, then at the option of the Lessor, all rights of Lessee under this lease shall forthwith cease and terminate save and except that Lessee shall have the right to retain all wells then producing or in the course of drilling, as to which Lessee is not in default, with full right to operate, retain, produce, redrill, deepen and properly maintain all such wells subject to all provisions of this lease, and to use as much of said land as may be necessary or convenient for Lessee's operations of such wells as long as said wells respectively shall produce oil or gas in quantities deemed paying by Lessee, and Lessor shall not drill or permit to be drilled any well on said premises within Six Hundred (600) feet of any well so retained by Lessee. Forfeiture of rights as in this section provided shall be the exclusive remedy of Lessor for breach of obligations, or any thereof by Lessee excepting the obligation of Lessee to make full payment of royalties as in this lease provided. It is understood and agreed that the right of Lessor to declare forfeiture and termination of this lease for failure to commence operations for the drilling of the first well as provided in Sections 4 and 5 hereof, shall be absolute and no period of grace shall be granted Lessee.

19. All work done on the land by Lessee shall be at Lessee's sole cost and expense, and Lessee agrees to protect said land and Lessor from claims of contractors, laborers, or materialmen, and Lessor may post and keep posted on said lands such

Exhibit No. 9—(Continued)

notices as Lessor may desire to protect said lands against liens.

20. Lessor hereby agrees to defend the title to the land herein described and agrees that Lessee, at its option, may pay and discharge any taxes, mortgages or other liens existing, levied or assessed on or against the above described lands, and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or rentals accruing hereunder.

21. If the estate of either party hereto is assigned, (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to its successors and assigns, but no change or ownership in the land or in the rentals or royalties shall be binding on Lessee until Lessee has been furnished with written notice of such transfer or assignment, together with a certified copy of the instruments of transfer or assignment. Provided, however, that all payments or royalties due Lessor hereunder shall be payable as a whole to Lessor or Lessor's agent, (as provided in Section 23 hereof), and Lessee shall not be responsible for the division of the same in the event of any change of ownership in Lessor's interest hereunder.

22. "Drilling operations," or "Operations for the drilling of a well," as used in this lease is de-

Exhibit No. 9—(Continued)

fined to mean the placing of material upon the demised premises for the construction of a derrick for the drilling of an oil or gas well, followed diligently by the construction of such derrick and by actual drilling in the ground.

23. All money payments due Lessor hereunder shall be made for the account of and credit of Lessor to Anglo California National Bank at Bakersfield, California, or to such other person, bank or trust company in California as Lessor may designate to receive same for Lessor. If the interest of Lessor or a portion thereof is transferred and becomes vested in two or more parties, then such parties or a majority thereof in interest shall designate to Lessee in writing, accompanied by the acceptance of the payee, a bank or trust company in California to receive and distribute all such payments, and the Lessee upon tender of payment to same, shall be relieved from all obligations or responsibilities as to the proper distribution of the same. The action of the holders of the majority in ownership of Lessor's interest hereunder in instructing Lessee as to the bank or trust company to which payments are to be tendered or made, shall be binding upon all parties and any such majority is hereby authorized to designate or change the designated payee and to make the necessary arrangements with the payee for the distribution of funds. Lessee is hereby authorized to withhold the making of any payments until the provisions of this section are complied with.

Exhibit No. 9—(Continued)

24. Any notice or statement herein required or permitted to be given or furnished by one party to the other shall be in writing. Delivery of such written notice or statement to Lessor shall be made by depositing in the United States registered mail such written notice or statement addressed to Lessor at 1413 17th Street, Bakersfield, California, and delivery of such written notice or statement to Lessee shall be made by depositing in the United States registered mail such written notice or statement addressed to Lessee at Union Oil Building, Los Angeles, California. Either party hereto may by written notice change its address to any other location.

25. This lease and agreement shall be obligatory upon and shall inure to the benefit of the assigns and successors in interest of the respective parties hereto.

26. The entire agreement between the parties is embodied in this lease, and no covenant or agreement other than those set forth in this lease shall be obligatory upon either of the parties hereto except insofar as this lease may subsequently be modified by written agreement of the parties.

In Witness Whereof, the parties hereto have caused this lease to be executed the day and year first above written.

L. G. HELM,
ETTA HELM.

Lessor.

Exhibit No. 9—(Continued)

UNION OIL COMPANY OF
CALIFORNIA,

Lessee.

By W. W. ORCUTT,

Vice President.

By W. R. EDWARDS,

Secretary. [63]

General Form

State of California

County of Kern—ss.

On this 25th day of May, A. D. 1938, before me, M. J. Davis, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

M. J. DAVIS

Notary Public in and for said
County and State

(2nd General Form Verification and Corporation Form Verification not filled out.)

Exhibit No. 9—(Continued)

State of California

County of Los Angeles—ss.

On this 24th day of May, A. D., 1938, before me, Holt R. Gregory, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared W. W. Orcutt, known to me to be the Vice President, and W. R. Edwards, known to me to be the Secretary of Union Oil Company of California, the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

HOLT R. GREGORY

Notary Public in and for said
County and State.

My Commission Expires August 14, 1940. [64]

EXHIBIT No. 10

[Copyist's Note: This page contains the information appearing on the back of the attached instrument.]

Compared

3176

Recorded at Request of Security Title Insurance
and Guarantee Company

Jun - 1 1938

At 36 Min. Past 3 P. M. in Vol. 187 of Official Records,
Page 83 Kings County, Jos. M. Bowman,
Recorder

By Delana Embrey, Deputy

Copied Compared

Paged Indexed

Fee \$2.80

Borton, Petrini & Conron

Attorneys At Law

304 Professional Building

Bakersfield, California

11807

No. 62496

Baco.

Recorded at Request of Bakersfield Abstract Co.
May 27 1938 At 20 min. past 2 P. M. in Book 765
of Official Records Page 372, Kern County Records.

Chas. H. Shomate, Recorder

By Alice Jutson, Deputy Recorder

Compared

17/8/270 [65]

(Copy)

Know All Men By These Presents:

That Whereas, under date of June 29, 1937, L. G. Helm, as Trustee, and L. G. Helm individually, and Etta Helm individually, did make and execute a certain declaration of trust for the benefit of Lon V. Smith, Oscar Rudnick, George L. Bradford, M. J. Davis, Fred E. Borton, Morris Laba, Morris Himovitz, and Max Himovitz, as beneficiaries, which said declaration of trust, together with the approval and acceptance of the same by the beneficiaries, was on July 22, 1937 duly recorded in the office of the County Recorder of Kern County, California, in Book 737 of Official Records at page 158, Kern County Records, and was thereafter and on August 2, 1937 duly recorded in the office of the County Recorder of Kings County, in Volume 172 of Official Records at page 248, Kings County Records;

And Whereas, each of the beneficiaries named in said declaration of trust retains in his own name and in his own right all benefits and rights thereunder, without having assigned, transferred or hypothecated the same;

Now Therefore, in consideration of One Dollar

to them in hand paid, the said beneficiaries and the undersigned do hereby vacate, abrogate, set aside, and render of no further effect or validity the said declaration of trust and the rights of the beneficiaries, and each of them, thereunder, and do by these presents remise, release and forever quitclaim unto said L. G. Helm all of their rights under said declaration of trust and in the lands and premises described therein, and in each and every part thereof.

In Witness Whereof, the said beneficiaries under said trust have hereunto set their hands this 24th day of May, 1938.

(Sgd.)

LON V. SMITH

(Sgd.)

JANE W. SMITH

His wife [66]

“

OSCAR RUDNICK

“

LIBBIE RUDNICK

his wife

“

GEORGE L. BRADFORD

“

MARION BRADFORD

his wife

“

FRED E. BORTON

“

CARRIE L. BORTON

his wife

“

M. J. DAVIS

“

LORENE M. DAVIS

his wife

“

MORRIS LABA

“

ROSE LABA

his wife

(Sgd.)	MORRIS HIMOVITZ
“	PAULINE HIMOVITZ
	his wife
“	MAX HIMOVITZ
“	MARIE HIMOVITZ
	his wife [68]

State of California

County of Kern—ss.

On this 24th day of May, 1938, before me, Constance Campbell, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Lon V. Smith and Jane W. Smith, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

[Seal] (Sgd). CONSTANCE CAMPBELL
Notary Public in and for the County of Kern,
State of California.

State of California

County of Kern—ss.

On this 24th day of May 1938, before me Constance Campbell, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Oscar Rudnick, Libbie Rudnick, Fred E. Borton, M. J. Davis, Lorene M. Davis, Morris Laba, Rose Laba, Morris Himovitz, Pauline Himovitz, Max Himovitz and

Marie Himovitz, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

[Seal] (Sgd). CONSTANCE CAMPBELL
Notary Public in and for the County of Kern,
State of California.

State of California
County of Kern—ss.

On this 26th day of May, 1928, before me, Constance Campbell, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared George L. Bradford, Marion Bradford and Carrie L. Borton, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

[Seal] (Sgd). CONSTANCE CAMPBELL
Notary Public in and for the County of Kern,
State of California. [67]

EXHIBIT No. 11

Compared

4206

GRANT DEED

L. G. Helm, et. ux.

to

C. E. Houchin

Dated....., 19...

Recorded at Request of
Security Title Insurance and
Guarantee Company

Jul 27 1938

At 6 Min. Past 10 A. M.

In Vol. 188 of Official Records

Page 375 Kings County

JOS. M. BOWMAN,

Recorder

By J. BEVAN

Deputy

Copied

Compared

Bakersfield Abstract Co.

1704 Chester Avenue

Bakersfield, California

Fee 1.00.

This Deed Requires I. R. S.

GRANT DEED

In consideration of \$10.00, receipt of which is acknowledged, L. G. Helm and Etta Helm, his wife,

whose address is.....do.....hereby grant to C. E. Houchin whose address is.....all that real property in the.....County of Kings, State of California, described as:

The West half of the Northeast quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$); the East half of the Northwest quarter ($E\frac{1}{2}$ of $NW\frac{1}{4}$) and the East half of the Southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) of Section Thirty (30), Township Twenty-four (24) South, Range Twenty-two (22) East, M.D.B.M.

Subject to: Conditions, restrictions, reservations and rights of way of record.

An agricultural lease for grain crops expiring July 1, 1939, which covers this and other property.

Dated this first day of July, 1938.

L. G. HELM

ETTA HELM

\$8.00 in Documentary stamps cancelled 7/25/38
by G. L. B. [69]

State of California

County of Kern—ss.

On this 22nd day of July, 1938, before me, Geraldine Graham a Notary Public in and for said County, personally appeared L. G. Helm and Etta Helm, his wife known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

GERALDINE GRAHAM

Notary Public in and for said
County and State

Order No.....

Escrow No.....

When Recorded Please Mail to:

C. E. Houchin

Bakersfield, Calif. [70]

EXHIBIT No. 12

DECLARATION OF TRUST

Whereas, by declaration of trust, bearing date the 29th day of June 1937 and recorded in the office of the County Recorder of Kern County, California, on July 22, 1937 in Book 737 of Official Records at page 158 and also recorded in the office of the County Recorder of Kings County, California, on August 2, 1937 in Book 172 of Official Records at page 248, L. G. Helm did declare himself trustee for certain persons and upon certain trusts therein specified, and affecting certain real property in Kern County and in Kings County, California, therein more specifically described; and

Whereas, thereafter the beneficiaries named in said trust agreement did make, execute, deliver, and

Exhibit No. 12—(Continued)

cause to be recorded in the Counties of King and Kern an instrument cancelling said trusts and relinquishing their interest therein under the said L. G. Helm; and

Whereas, said last mentioned instrument was made, executed, delivered and recorded by the said beneficiaries in full reliance upon the integrity of him, the said L. G. Helm for the purpose of enabling him to enter into certain agreements and transactions regarding the property, the subject matter of said trust, without the necessity of complicated instruments and proceedings which otherwise would have been necessitated by the existence of said trust; and

Whereas, the said L. G. Helm has duly executed and delivered the said instruments and duly made and carried out the said Transactions above referred to, and fully [71] accounted to the beneficiaries under said trust for his entire action and receipts in connection therewith; and

Whereas, the said beneficiaries do hereby ratify and confirm each and all of the acts of the said L. G. Helm in regard to said property; and

Whereas, it is now desired to re-declare and re-establish said trust as to the property remaining of said trust property in the hands of the said L. G. Helm; and

Whereas, subsequent to the date of the original

Exhibit No. 12—(Continued)

declaration of trust one of the beneficiaries thereof, to-wit: Morris Laba, has, with the approval of the said trustee, sold, assigned and transferred one-fourth of his interest in said trust and in the trust property to Charlie Ross, and has sold, assigned and transferred one-fourth of his interest in said trust and in the trust property to T. P. Rootes, thus leaving the said Morris Laba the owner and holder of a one-eighteenth interest in said trust and trust property, and constituting the said Charles Ross the owner and holder of a one-thirty-sixth interest in said trust and trust property, and constituting the said T. P. Rootes the owner and holder of a one-thirty-sixth interest in said trust and trust property; and

Whereas, each of the other beneficiaries retains his original interest of $\frac{1}{9}$ th unsold and undisposed of:

Now Therefore, in consideration of the premises and of the sum of One Dollar to him in hand paid by each of the beneficiaries hereinafter named, the said L. G. Helm and Etta Helm, his wife, do hereby make the following declaration of trust, and do declare that the trust property consists of real estate as follows:

The east half of the southeast quarter ($E\frac{1}{2}$ of $SE\frac{1}{4}$) of section twenty-five (25) and the southeast quarter ($SE\frac{1}{4}$) of section thirty-six (36) all in township twenty-four (24) south, range twenty-

Exhibit No. 12—(Continued)

one (21) east, M.D.B.M. in the County of Kings, State of California; and

The west half ($W\frac{1}{2}$) of the northwest quarter ($NW\frac{1}{4}$) of section thirty (30) and the south half of the north half ($S\frac{1}{2}$ of $N\frac{1}{2}$) of section twenty-nine (29); the south half of the northwest quarter ($S\frac{1}{2}$ of $NW\frac{1}{4}$) and the west half of the northeast quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$) of section thirty-two (32); the west half ($W\frac{1}{2}$) of section thirty-three (33); and the west half ($W\frac{1}{2}$) of section thirty-four (34) all in township twenty-four (24) south, range twenty-two (22) east, M.D.B.M. in the County of Kings, State of California; and

The north half of the northwest quarter ($N\frac{1}{2}$ of $NW\frac{1}{4}$) of section three (3); the northeast quarter and the north half of the southeast quarter ($N\frac{1}{2}$ of $SE\frac{1}{4}$) of section four (4); all of the north half of the north half ($N\frac{1}{2}$ of $N\frac{1}{2}$) except the northeast quarter of the northeast quarter ($NE\frac{1}{4}$ of $NE\frac{1}{4}$) and the east 29.69 acres of the northwest quarter of the northeast quarter ($NW\frac{1}{4}$ of $NE\frac{1}{4}$) of section six (6) all in township twenty-five (25) south, range twenty-two (22) east, M.D.B.M. in the County of Kern, State of California; and

The east half of the southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) and the southwest quarter of the southwest quarter ($SW\frac{1}{4}$ of $SW\frac{1}{4}$) of section one (1) in township twenty-five (25) south, range twenty-one (21) east, M.D.B.&M. in the County of Kern, State of California.

Exhibit No. 12—(Continued)

Said parcels of land are subject to the following described leases and encumbrances, to-wit:

1. A certain oil and gas lease bearing date the 24th day of May 1938, executed by L. G. Helm and Etta Helm, his wife, as lessors, to Union Oil Company of California, a California corporation as lessee, covering the South half of the northwest quarter ($S\frac{1}{2}$ of $NW\frac{1}{4}$) of section 32; the west half of the southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$) of section 33; the west half of the southwest quarter ($W\frac{1}{2}$ of $SW\frac{1}{4}$) of section 34; all in township 24 south, range 22 east, of the M.D.B.M., Kings County, California.

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2. A certain oil and gas lease bearing date the 21st day of May 1938, executed by L. G. Helm and Etta Helm, his wife, as lessors, and Signal Oil and Gas Company, a corporation, as lessee, describing the

North half of the southeast quarter ($N\frac{1}{2}$ of $SE\frac{1}{4}$) of section four (4) township twenty-five (25) south, range twenty-two (22) east, M.D.B.M., according to the Official Plat of the Survey of the said land, returned to the general land office by the Surveyor-General, in the County of Kern, State of California.

3. A certain oil and gas lease bearing date the 19th day of May, 1938, executed by L. G. Helm and Etta Helm, his wife, as lessors, and Barnsdall Oil Company, a corporation, as lessee, describing the

Exhibit No. 12—(Continued)

East half of southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) of section thirty-three (33) and east half of southwest quarter ($E\frac{1}{2}$ of $SW\frac{1}{4}$) of section thirty-four (34) all in township twenty-four (24) south, range twenty-two (22) east, M.D.B.M. Kings County, State of California.

4. A certain oil and gas lease bearing date the 20th day of May, 1938, executed by L. G. Helm and Etta Helm, husband and wife, as lessors, and Pacific Western Oil Corporation, a Delaware corporation, as lessee, describing the

West half of northeast quarter ($W\frac{1}{2}$ of $NE\frac{1}{4}$) of section 32, township 24 south, range 22 east, M.D.B.M. Kings County, California.

5. A certain deed of mineral right bearing date the 18th day of May, 1938 between L. G. Helm and Etta Helm, his wife, as grantors, and Standard Oil Company of California, a Delaware corporation, as grantee, describing the

North half ($N\frac{1}{2}$) of the northwest quarter ($NW\frac{1}{4}$) of section three (3) and the northeast quarter ($NE\frac{1}{4}$) of section four (4) township twenty-five (25) south, range twenty-two (22) east, M.D.B.M. Kern County, California;

The south half ($S\frac{1}{2}$) of the north half ($N\frac{1}{2}$) of section twenty-nine (29) the northwest quarter ($NW\frac{1}{4}$) of section thirty-three (33), and the northwest quarter ($NW\frac{1}{4}$) of section thirty-four (34) township twenty-four (24) south, range twenty-two (22) east, M.D.B.M. Kings County, California.

Exhibit No. 12—(Continued)

The said L. G. Helm does hereby declare that all of his rights, powers and authorities, privileges and benefits under the terms of said leases, and each of them, and under the terms of the said deed of mineral right are held upon the same trusts as the real estate to which the same relate, and as hereinafter more particularly described.

Specification of Trust

The said L. G. Helm and Etta Helm, his wife, do hereby acknowledge and declare that the interests held by the said L. G. Helm in the property described above is held and shall be held In Trust for the following named persons in the proportions set after their names; (certain of the beneficiaries under said trust having elected that their interest thereunder shall be a joint estate with their wives, and in each instance of a joint estate the interest held by husband and wife in joint tenancy being one-ninth).

1. Lon V. Smith and Jane W. Smith,
his wife as joint tenants.....1/9
2. Geo. L. Bardford and Marion Brad-
ford, his wife, as joint tenants.....1/9
3. M. J. Davis and Lorene M. Davis, his
wife, as joint tenants.....1/9
4. Morris Himovitz1/9
5. Max Himovitz1/9
6. Oscar Rudnick1/9
7. Fred E. Borton and Carrie L. Bor-
ton, his wife, as joint tenants.....1/9

Exhibit No. 12—(Continued)

8. L. G. Helm.....	1/9
9. Morris Laba	1/18 A
10. Charlie Ross	1/36 A
11. T. P. Rootes.....	1/36 A

Said Trustee shall have and hold the legal title to said property and all interest now held or hereafter acquired in and to said property for the benefit of said beneficiaries and to manage and control the same, to sell, convey, lease, including oil and gas leases, for any period or periods within or extending beyond [73] the life of this trust, including for purposes of developing and producing oil, gas, and other hydrocarbon substances from said real property, to encumber the same and to execute and deliver any such conveyances, encumbrances, leases and oil and gas leases, providing, however, said Trustee shall first have obtained from the committee hereinafter provided, written consent to so execute and deliver such conveyances, encumbrances, leases and oil and gas leases.

The trustee shall ascertain and pay any amount of principal and interest which may become due and payable upon any encumbrances hereafter placed upon said property including taxes and assessments, providing, however, that each of the beneficiaries shall provide their proportion of the funds necessary for the payment of the same and said trustee shall collect, pay out, and distribute all income, profits and receipts from said real property, Excepting However, that he shall retain the

Exhibit No. 12—(Continued)

sum of \$1.00 annually in full payment of his services in connection with this trust.

In the event any beneficiary hereunder shall fail to pay his proportion of any sums so expended by the trustee, said trustee is hereby empowered and authorized to advance any such sum and in the event such defaulting beneficiary does not repay such advance within ten days after receipt of written demand therefor from said trustee, then in that event the trustee shall give written notice of such default to each of the remaining beneficiaries and should such remaining beneficiaries or any one of them not purchase the interest in this trust of such defaulting beneficiary within fifteen days of such last mentioned notice, then the trustee with the written consent of the committee hereinafter referred to, is hereby authorized and directed to proceed to sell and shall sell the interest of such defaulting beneficiary in the manner of the sale of real estate upon foreclosure under deeds of trust securing indebtedness, said trustee giving notice and conducting said sale as provided by statute therefor.

Should sale be so made of the interest of any beneficiary hereunder then such beneficiary whose interest is so sold shall be debarred from any right, title or interest whatsoever in and to said trust property, or any beneficial interest therein and of all equity of redemption of the same and the certificate of the trustee to the purchaser at such sale shall be conclusive evidence that such beneficial in-

Exhibit No. 12—(Continued)

terest and all title thereto has actually passed to such purchaser, providing however, that if the interest so sold shall bring more than the money owed by such defaulting beneficiary including the expenses of such sale, the trustee shall account and pay to the beneficiary whose interest is so sold, any excess.

No assignment of any beneficial interest or part thereof shall be valid unless and until the trustee shall receive a duly executed original of such assignment duly accepted by the assignee disclosing the address of such assignee and including upon the part of such assignee an assumption of the obligation of the beneficiaries herein as to the interest so assigned.

There is hereby created a committee of four with whom the trustee shall have an equal vote as if he were a member thereof, which shall have, and is hereby granted, exclusive power to manage and control the property, the subject of the trust, and to lease, including for oil and gas development purposes, sell or otherwise dispose or encumber the same, when in their judgment it is to the advantage of the trust and of the persons interest therein so to do, and said trustee shall execute and deliver such conveyances, encumbrances, leases and oil and gas leases, as he may be directed to do so by the majority vote of said committee at a meeting duly and regularly called.

In case of vacancy in the trusteeship or in the

Exhibit No. 12—(Continued)

committee the same shall be filled and the said committee shall have and is hereby granted full power to choose any of the beneficiaries in this trust to serve on said committee or to act as sub- [74] stitute trustee until a new trustee is appointed, which trustee shall be appointed by a majority vote of the beneficiaries in this trust, and such new trustee shall succeed to the right, powers and authorities of the trustee without any special conveyance or transfer from the former trustee, or otherwise to the new trustee and until such time as such substitute or new trustee shall be appointed, the said committee shall as a unit have, and is hereby granted, full power and control over the trust property, including all of the rights and duties of such trustee.

The trustee herein named shall continue in office until his death, resignation or removal by a final order of court, and each member of the committee hereinafter named shall continue in office until his death, resignation or removal by a final order of the court.

The following named persons are hereby designated as constituting the committee referred to, to-wit:

Lon V. Smith
Morris Himovitz
M. J. Davis
Fred E. Borton

It is further hereby agreed that this trust shall continue for a period of twenty-five years from this

Exhibit No. 12—(Continued)

date, unless and until sooner terminated by the agreement of the parties hereto, or in accordance with the terms hereinafter set forth.

This trust may be terminated at any time upon the consent and written approval of the holders of two-thirds of the total beneficial interest herein, and upon such termination the property being the subject of this trust shall be conveyed by the trustee to the beneficiaries *proprately* according to the interest so held, it being understood that in the event at the date of such partition and division should said real property or any portion thereof be subject to any existing oil and gas lease, that all of the beneficiaries at the date of such termination shall participate *prorately* in all future royalties, rents, issues and profits paid under the terms and conditions of any existing lease or leases.

In the event the beneficiaries herein are unable to decide among themselves as to an equitable partition of said property, then in that event the committee shall divide such property in such equal units as may in their judgment be the most equitable and practical partition of such property, whereupon each of said beneficiaries shall draw by lot the unit to which they shall become entitled.

Upon the completion of the trust by lapse of time or otherwise, unless previously said trust property has been so partitioned, same shall be distributed among the beneficiaries in undivided interests in proportion to their respective interest, and all

Exhibit No. 12—(Continued)

things of value arising therefrom or subject thereto and in the hands of the trustee, shall likewise be distributed.

In Witness Whereof, the said L. G. Helm, as trustee, and the said L. G. Helm and Etta Helm, his wife, as individuals, have executed this declaration and the said beneficiaries have consented thereto, this 15th day of July 1938.

L. G. HELM,
as Trustee

L. G. HELM,
individually

ETTA HELM,
individually

State of California

County of Kern—ss.

On this 31st day of October A.D. 1938 before me, Geraldine Graham a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm and Etta Helm known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Exhibit No. 12—(Continued)

In Witness Whereof, I have hereunto set my hand and affixed my official seal [75] the day and year in this certificate first above written.

[Seal]

GERALDINE GRAHAM

Notary Public in and for said County and State of California.

We, the undersigned, beneficiaries in the foregoing declaration, have read, understood, and do hereby approve the same, and agree to be fully bound thereby.

LON V. SMITH
OSCAR RUDNICK
GEO. L. BRADFORD
FRED E. BORTON
MORRIS HIMOVITZ
MAX HIMOVITZ
M. J. DAVIS
MORRIS LABA
CHARLES R. ROSS
T. P. ROOTES

State of California
County of Kern—ss.

On this 31st day of October A. D. 1938 before me, Geraldine Graham, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared Lon V. Smith, Oscar Rudnick, Geo. L. Bradford, Fred E. Borton, Morris Himovitz, Max Himovitz, M. J. Davis, Morris Laba, Charles R. Ross, T. P. Rootes

Exhibit No. 12—(Continued)

known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

GERALDINE GRAHAM

Notary Public in and for said County and State of California.

State of California

County of Kern—ss.

On this 31st day of October A. D. 1938 before me, Geraldine Graham, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared L. G. Helm, Trustee known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same, as trustee.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

GERALDINE GRAHAM

Notary Public in and for said County and State of California.

Exhibit No. 12—(Continued)

Recorded at request of Bakersfield Abstract Co.,
Nov. 1, 1938 at 9 A.M. in Book 834 of Official Rec-
ords page 28 Kern County Records.

CHAS. H. SHOMATE,

Recorder

By FRANCES AHMANN,

Deputy Recorder

Checked by: P. App.

A

25099 Compared by: H. Hoberecht

(Duly Verified) [76]

EXHIBIT No. 13

Form 1065

(13)

Oil

Treasury Department Internal Revenue Service

United States

1938 Partnership Return of Income 1938

(To be Filed Also by Syndicates, Pools, Joint
Ventures, Etc.)

For Calendar Year 1938

or fiscal year beginning....., 1938, and ended
....., 1939.

(File this return not later than the 15th day of
the 3d month following the close of the taxable year)

(Print plainly Name and Business Address of
the Organization)

Helm & Smith Syndicate (Name) c/o L. G. Helm, 1413 17th Street (Street and number), Bakersfield, (Post office) Kern (County), California (State.)

Business or Profession (Syndicate). (Also)

Do Not Use This Space Do Not Use These Spaces
(Auditor's Stamp) File Code.....

Serial No. 971504.

District

(Date Received)

Received

Feb 27 (Illegible)

6th Calif. Dist.

[Stamp]

Revenue (Illegible)

Jun 7 1939

Los Angeles Division

GROSS INCOME

Item and
Instruction
No.

13. Total income in items 3 to 12 (enter nontaxable income in Schedules A and G)

See Attached Income Account.....\$25,336.46

DEDUCTIONS

24. Total deductions in items 14 to 23

See Attached Income Account..... 4,902.53

25. Ordinary net income (item 13 minus item 24)

See Attached Income Account.....\$20,433.93

26. Net short-term capital gain (or loss) (from line
1, column 4, Summary, Schedule H).....\$ 5,878.30

27. Net long-term capital gain (or loss) (from line
2, column 4, Summary, Schedule H).....\$ 2,800.00
[78]

Schedule A.

INTEREST ON GOVERNMENT OBLIGATIONS, ETC.

(See Instruction 7)

[Ruled Form—Not Filled In]

Schedule B.

GAINS AND LOSSES FROM SALES OR EXCHANGES
OF PROPERTY OTHER THAN CAPITAL ASSETS.

(See Instruction 10)

[Ruled Form—Not Filled In]

Schedule C.—TAXES.

(See Instruction 18)

[Ruled Form—Not Filled In]

Schedule D.—BAD DEBTS.

(See Instruction 20)

[Ruled Form—Not Filled In]

Schedule E.—DEPRECIATION.

(See Instruction 21)

[Ruled Form—Not Filled In]

Schedule F.

EXPLANATION OF DEDUCTIONS CLAIMED
IN ITEMS 17 AND 23

[Ruled Form—Not Filled In]

Schedule G.

NONTAXABLE INCOME OTHER THAN INTEREST
REPORTED IN SCHEDULE A.

(See Instruction 13)

[Ruled Form—Not Filled In]

[79]

Schedule H.

GAINS AND LOSSES FROM SALES OR EXCHANGES
OF CAPITAL ASSETS.

(See Instructions 26-27)

Short-Term Capital Gains and Losses—Assets
Held Not More Than 18 Months
[See Attached Schedule]

Long-Term Capital Gains and Losses—Assets Held for More
Than 18 Months but Not for More Than 24 Months
[See Attached Schedule]

Long-Term Capital Gains and Losses—Assets
Held for More Than 24 Months
[See Attached Schedule]

SUMMARY OF CAPITAL NET GAINS OR LOSSES
[Ruled Form—Not Filled In]

Schedule I.
CONTRIBUTIONS OR GIFTS PAID.
(See Instruction 28)
[Ruled Form—Not Filled In]

[80]

Schedule J.
PARTNERS' SHARES OF INCOMES AND CREDITS
(See Instruction 28)
[See Attached Schedule]

CONTINUATION OF SCHEDULE J
[Ruled Form—Not Filled In]

Questions

1. Date of organization, January 6, 1938.
2. Nature of organization (partnership, syndicate, pool, joint venture, etc.) Syndicate.
3. If return was filed for preceding year, to which collector's office was it sent?.....
4. Check whether this return was prepared on the cash [xx] or accrual ☐ basis.
5. State whether inventories at the beginning and end of the taxable year were valued at (a) cost, or (b) cost or market, whichever is lower.....
If any other basis is used, attach statement de-

scribing basis fully, state why used and the date inventory was last reconciled with stock.....

6. Did the organization at any time during the taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company, as defined in section 402? (Answer "Yes" or "No") No. If answer is "Yes," attach schedule required by Instruction I.

7. Was return of information on Forms 1096 and 1099 filed for the calendar year 1938? (See Instruction H)No.

Affidavit (See Instruction D)

I swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return, made in good faith for the accounting period stated, pursuant to the Revenue Act of 1938 and the Regulations issued under authority thereof.

L. G. HELM,
Trustee.

Subscribed and sworn to before me this 27th day of February, 1939.

GERALDINE GRAHAM,
Notary Public.

(If this return was prepared for you by some other person, the following affidavit must be executed)

Affidavit (See Instruction D)

I/we swear (or affirm) that I/we prepared this return for the organization named herein and that

the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

CHAS. A. HARE.

Subscribed and sworn to before me this 27th day of February, 1939.

[Seal]

GERALDINE GRAHAM,

Notary Public. [81]

PARTNERSHIP INCOME TAX RETURN

YEAR 1938

Helm & Smith Syndicate
c/o L. G. Helm
1413 - 17th Street
Bakersfield, California

INCOME ACCOUNT

Revenues:

Sale of Sheep Feed on Lands.....	860.27
Sale of Grain from Lands.....	1,170.37
Lon V. Smith received a Commission from Miller & Lux on the original Sale of certain Lands to this Syndicate, and being a member of the Syndicate, he turned over to the Syndicate for benefit of all	1,820.44
	<u>3,851.08</u>

Disbursements:

Paid for relinquishment of Sheep Feed on Lands....	368.00
Taxes—State and County—Real Estate.....	568.68
Interest	2,671.45
Recording fees, Stenographer.....	50.62
Office Rent	25.00
Grain Insurance	8.48
	<u>3,692.23</u>

3,692.23	3,692.23
<u>158.85</u>	

Other Revenues:		
Gain from Sale of Capital Assets		
per schedule attached.....		8,678.30
Oil Lease Bonuses received, per schedule,		
amount taxable		21,485.38

		30,322.53
Other Deductions:		
Escrow fees on Union Oil Co. Lease.....	10.30	
Commission to L. G. Helm.....	500.00	
Commission to Lon V. Smith.....	500.00	
Commission to J. Lee Cross.....	200.00	1,210.30
	-----	-----
Total Net Taxable Income.....		29,112.23

Summary:		
Ordinary Net Income.....		20,433.93
Short term Capital Gains.....		5,878.30
Long term Capital Gains.....		2,800.00

DISTRIBUTIVE SHARES.

Distributees	Ordinary Net	Capital Gains		Totals
		Short term	Long term	
Morris Himovitz	\$ 2,270.44	\$ 653.14	\$ 311.11	3,234.69
Max Himovitz	2,270.44	653.14	311.11	3,234.69
Oscar Rudnick	2,270.44	653.14	311.11	3,234.69
Fred Borton	2,270.44	653.14	311.11	3,234.69
Marvin Davis	2,270.44	653.14	311.11	3,234.69
George Bradford	2,270.43	653.15	311.11	3,234.69
Lon V. Smith	2,270.43	653.15	311.11	3,234.69
L. G. Helm	2,270.43	653.15	311.11	3,234.69
Morris Laba	1,135.22	326.57	155.56	1,617.35
Charles Ross	567.61	163.29	77.78	808.68
T. P. Rootes	567.61	163.29	77.78	808.68
	20,433.93	5,878.30	2,800.00	29,112.23

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PARTNERSHIP INCOME TAX RETURN
YEAR 1938

Helm & Smith Syndicate
c/o L. G. Helm
1413 17th Street
Bakersfield, California

SCHEDULE OF
GAINS FROM SALE OF CAPITAL ASSETS
—REAL ESTATE—

—A—

June 29, 1938—Sold to C. E. Houchin, Bakersfield, California.

Lands in Section 30, T 24, R 22, as follows:

W $\frac{1}{2}$ of N. E. $\frac{1}{4}$ 80 acres

E $\frac{1}{2}$ of N. E. $\frac{1}{2}$ 160 "

and Lands in

Section 1, T. 25, R. 21, as follows:

S $\frac{1}{2}$ of N. E. $\frac{1}{4}$ 92.53 acres

For the Total Price of.....10,806.25

Jan. 8, 1937, Purchased these lands from

Miller & Lux, 332.53 acres @ 15.00 per acre..... 4,927.95

Gross Gain 5,878.30

—B—

July 25, 1938, Sold to C. E. Houchin, Bakersfield, California.

Lands in Section 32, T 24, R 22, as follows:

the S. W. $\frac{1}{4}$, 160 acres

and Lands in Section 30, T 24, R 22

as follows:

the E $\frac{1}{2}$ of N E $\frac{1}{4}$ 80.acres

For the total price of..... 7,800.00

Jan. 8, 1937, Purchased these lands from

Miller & Lux,

240 acres @ 15.00 per acre..... 3,600.00

Gross Gain 4,200.00

Gain to be taken into account:

"A" 100% of 5,878.30 5,878.30

"B" 66 $\frac{2}{3}$ % of 4,200.00 2,800.00

8,678.30

[83]

PARTNERSHIP INCOME TAX RETURN
YEAR 1938

Helm & Smith Syndicate
c/o L. G. Helm
1413 7th Street
Bakersfield, California

SCHEDULE OF LEASES GIVEN FOR EXPLORATION
and
AMOUNTS RECEIVED AS BONUSES ON SAME

May 1938, to Standard Oil Company

Granted the oil and gas in
the N $\frac{1}{2}$ of Sec. 3, T 25, R 22;
the N E $\frac{1}{4}$ of Sec 4, T 25, R 22;
the S $\frac{1}{2}$ of the N $\frac{1}{2}$ of Sec 29, T, 24, R 22;
the N W $\frac{1}{4}$ of Sec 34, T 24, R 22;
and the N W $\frac{1}{4}$ of Sec 33, T 24, R 22,
for a period of 20 years for a bonus of.....14,400.00

June 1938, to Union Oil Company

Leased
the S $\frac{1}{2}$ of the N W $\frac{1}{4}$ of Sec. 32, T 24, R 22;
the W $\frac{1}{2}$ of the S W $\frac{1}{4}$ of Sec. 33, T 24, R 22;
the W $\frac{1}{2}$ of the S W $\frac{1}{4}$ of Sec. 34, T 24, R 22;
for a period of 5 years for a bonus of..... 7,200.00

June 1938, to Barnsdall Oil Company—Leased

the E $\frac{1}{2}$ of the S W $\frac{1}{4}$ of Sec. 33, T 24, R 22;
the E $\frac{1}{2}$ of the S W $\frac{1}{4}$ of Sec 34, T 24, R 22;
for a period of 5 years for a bonus of..... 4,000.00

June 1938, to Signal Oil & Gas Company

Leased
the N $\frac{1}{2}$ of the S E $\frac{1}{4}$ of Sec. 4, T 25, R 22;
for a period of 5 years for a bonus of..... 2,035.00

June 1938, to Pacific Western Oil Company

Leased
the W $\frac{1}{2}$ of the N E $\frac{1}{4}$ of Sec 32, T 24, R 22
for a period of 5 years for a bonus of..... 2,000.00

— — — —
29,635.00

Less Statutory Depletion Allowance of $27\frac{1}{2}\%$ 8,149.62

— — — —
21,485.38

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PARTNERSHIP INCOME TAX RETURN
YEAR 1938

Helm & Smith Syndicate
c/o L. G. Helm
1413 17th Street
Bakersfield, California

SCHEDULE OF REAL ESTATE PURCHASES
and
EXPLANATION OF SYNDICATE PURPOSES

January 8, 1937—L. G. Helm purchased from Miller & Lux, under a contract of sale, the following described un-improved Real Estate, viz:

92.53 Acres in	Sec 1, T 25 R 21 M.D.B & M (described by metes & bounds)
434.68 Acres in	the N $\frac{1}{2}$ and the E $\frac{1}{2}$ of the S W $\frac{1}{4}$ of Sec. Sec 30, T 24 R 22;
160. Acres in	the S $\frac{1}{2}$ of the N $\frac{1}{2}$ of Sec. 29;
160. Acres in	the S W $\frac{1}{4}$ of Sec. 32;
80. Acres in	the S $\frac{1}{2}$ of the N W $\frac{1}{4}$ of Sec. 32;
80. Acres in	the W $\frac{1}{2}$ of the N E $\frac{1}{4}$ of Sec. 32;
320. Acres in	the W $\frac{1}{2}$ of Sec. 33;
320. Acres in	the W $\frac{1}{2}$ of Sec. 34;
	All in T 24, R 22, M.D.B.M.
80. Acres in	the N $\frac{1}{2}$ of the N W $\frac{1}{4}$ of Sec. 3;
160. Acres in	the N E $\frac{1}{4}$ of Sec. 4;
81.40 Acres in	the N $\frac{1}{2}$ of the S E $\frac{1}{4}$ of Sec. 4;
	All in T 25, R 22, M.D.B. & M.
80. Acres in	the E $\frac{1}{2}$ of the S E $\frac{1}{4}$ of Sec. 25;
160. Acres in	the S E $\frac{1}{4}$ of Sec. 36;
	All in T 24, R 21, M.D.B. & M.
122.28 Acres in	the E $\frac{1}{2}$ of the S W $\frac{1}{4}$ and the S W $\frac{1}{4}$ of Sec. 1 T 25 R 21 M.D.B. & M.
96.37 Acres	being all of the N $\frac{1}{2}$ of the N $\frac{1}{2}$ of Sec 6, T 25, R 22, M.D.B. & M, except the N E $\frac{1}{4}$ of the N E $\frac{1}{4}$; and the E 29.69 acres of the N W $\frac{1}{4}$ of the N E $\frac{1}{4}$;
2427.26 acres	@ 15.00 per acre.....36,408.90

The above lands were purchased in behalf of a syndicate of individuals whose names and shares are stated in the partnership Income Return to which this Schedule is attached, and with the purpose of leasing or selling same to the best advantage of the interested persons. The Syndicate holds title, through L. G. Helm, to all lands except 572.53 acres sold to C. E. Houchin.

[85]

EXHIBIT No. 14

No.	6th Cal.
(For Washington Use	(Collection district)
Only)	Assessment List,
Form 707	Form No. 23 A
Treasury Department	Apr 1941
Internal Revenue Service	(Month) (Year)
(To be stamped above by	4004 / 4
Collector, showing Dis-	(Page) (Line)
trict and date received)	(For Washington Use
	Only)

1938 Return
of
Capital-Stock Tax

For Year Ending June 30, 1938
(Sec. 601, Revenue Act of 1938)

This return must be filed in triplicate, and received with remittance by the Collector of Internal Revenue for your district or Baltimore, Md., on or before July 31, 1938.

[Stamp]

Received

with Remittance

Apr 26 1941

Coll. Int. Rev.

Los Angeles, Cal.

O. G. S.

1. Name Helm and Smith Syndicate (Print name of corporation, joint-stock company, or association)
2. Address c/o L. G. Helm, 1413 17th St., Bakersfield, California (Give principal place of business in the United States).
3. Home office located at c/o L. G. Helm, 1413 17th St., Bakersfield, California (Give street and number, city or town, and country).
4. Nature of business in detail See rider attached.
5. Was a 1937 capital-stock tax return filed? No. Name under which filed. (If different, attach statement explaining fully).
6. Date of close of last income tax year ended on or prior to June 30, 1938 December 31, 1937.
Was an income tax return for that year filed?
Yes. District, 6th California.
Name under which filed Fiduciary return, L. G. Helm, Trustee.
If the corporation is newly organized and has not established an income tax year, state date of organization. See rider.
7. Affiliated companies (domestic or foreign) em-

playing capital in the United States. None.

8. Declared value of entire capital employed in the transaction of business in the United States.....\$300,000.

(The value declared must be definite and unqualified. A value must be declared In Every Case regardless of whether exemption from the tax is claimed. See instructions 1 and 2.)

9. Exemptions.—The Act provides for exemptions from the tax only on the grounds indicated below. Corporations claiming exemption must (1) declare a value under item 8, (2) check the appropriate block under item 9 showing the basis of the claim, and (3) submit with the return a full statement of the evidence specified under the block checked.

☐ Corporation exempt from income tax under section 101, Revenue Act of 1938. State under which subsection of section 101.....

☐ Insurance company subject to tax under section 201, 204, or 207, Revenue Act of 1938. State which section.....

☐ Corporation not doing business in the United States. (1) Furnish information required under instruction 3. (2) Declare value of capital employed in the transaction of business in the United States in item 8, above.

Computation of Tax		For Use of Taxpayer	For Use of Department
10.	Declared value. (Must be identical figure entered in item 8.).....	\$300,000.00	\$.....
11.	Tax at rate of \$1 for each full \$1,000 in item 8.....	300.00	
12.	Penalty of percent for delinquency in filing return.....		
13.	Interest at 6 percent per annum beginning August 1, 1938.....	48.17	
14.	Total Tax, Penalty, and Interest..\$	348.17	\$.....
	M. J. Davis		Trustee

Collector's Copy

B-1

[86]

LAW

Section 601, Revenue Act of 1938

(a) * * * *

(b) For each year ending June 30, beginning with the year ending June 30, 1938 there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to \$1 for each \$1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

(c) The taxes imposed by this section shall not apply—

- (1) to any corporation enumerated in section 101 of this Act;
- (2) to any insurance company subject to the tax imposed by section 201, 204, or 207 of this Act.

(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of business or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such return shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, insofar as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the

same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(f) (1) The adjusted declared value shall be determined with respect to 3-year periods beginning with the year ending June 30, 1938, and each third year thereafter. The first year of each such 3-year period, or, in case of a corporation not subject for such year to the tax imposed by this section, the first year of such 3-year period for which the corporation is subject to the tax, shall constitute a "declaration year."

(2) For each declaration year the adjusted declared value shall be the value, as declared by the corporation in its return for such declaration year (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending with or prior to the close of such declaration year (or as of the date of organization in the case of a corporation having no income-tax taxable year ending with or prior to the close of such declaration year).

* * * * *

(5) For each year of any 3-year period subsequent to the declaration year, the adjusted declared value in the case of a foreign corporation shall be the value declared in the return for the declaration year adjusted (for the same income-tax taxable years as in the case of a domestic corporation), in accordance with regulations prescribed by the Commissioner with the approval of the Secretary,

to reflect increases or decreases in the capital employed in the transaction of its business in the United States.

*	*	*	*	*	*	*
(g)	*	*	*	*	*	*

(h) The capital stock tax imposed by section 105 of the Revenue Act of 1935, as amended, shall not apply to any taxpayer with respect to any year after the year ending June 30, 1937.

Section 602. Excess-Profits Tax

(a) If any corporation is taxable under section 601 with respect to any year ending June 30, there is hereby imposed upon its net income for the income-tax taxable year ending after the close of such year, an excess-profits tax equal to the sum of the following:

Six per centum of such portion of its net income for such income-tax taxable year as is in excess of 10 per centum and not in excess of 15 per centum of the adjusted declared value;

Twelve per centum of such portion of its net income for such income-tax taxable year as is in excess of 15 per centum of the adjusted declared value.

(b) The adjusted declared value shall be determined as provided in section 601 as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year). If the income-tax taxable year in respect of which the tax under this

section is imposed is a period of less than 12 months, such adjusted declared value shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months. For the purposes of this section the net income shall be the same as the net income for income tax purposes for the year in respect of which the tax under this section is imposed, computed without the deduction of the tax imposed by this section, but with a credit against net income equal to the credit for dividends received provided in section 26 (b) of this Act.

(c) All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 of that title shall not be applicable.

(d) The excess-profits tax imposed by section 106 of the Revenue Act of 1935, as amended, shall not apply to any taxpayer with respect to any income-tax taxable year ending after June 30, 1938. B-2 [87]

A revenue agent's examination has recently been made dated May 22, 1940 (IT:R) wherein a deficiency of \$8,885.04 is proposed consisting of \$5,223.57 income tax and \$3,661.47 excess profits tax for the calendar year 1938. The basis of this proposed assessment is that taxpayer was an association taxable at corporate rates.

Taxpayer proposes to resist the foregoing as-

assessment because those who purchased the property which constitutes the basis of the within declaration had no intention of forming a business unit to conduct their affairs and consequently do not admit that they are taxable as a corporation. They did not think that they were so taxable at the time when capital stock tax returns were due on July 31, 1938 and therefore their failure to file a return was not willful but was due to reasonable cause.

This return together with the payment of tax is made for the purpose of protecting taxpayer against the eventuality of its failing to overcome the proposed assessment and is not intended to be, and is expressly not an admission that taxpayer now is or ever has been taxable as a corporation or other legal entitl. B-3 [88]

[Title of Board and Cause.]

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE U. S. BOARD OF TAX
APPEALS.

United States Post Office and Court House Build-
ing, Los Angeles, California, February 4, 1942,
10:00 o'clock a. m.

Before: Hon. John M. Sternhagen.

Met pursuant to notice.

Appearances:

William L. Kumler, Esq., 1104 Pacific Mutual

Building, Los Angeles, California, appearing for Helm and Smith Syndicate, Petitioner.

E. A. Tonjes, Esq., appearing for the Commissioner of Internal Revenue, Respondent. [90]

PROCEEDINGS

The Member: The first case on this morning is the Helm case, isn't it?

Mr. Tonjes: We are ready, your Honor.

The Member: Docket No. 107,125, Helm & Smith Syndicate. Who appears for the Petitioner?

Mr. Kumler: William L. Kumler, your Honor.

The Member: And for the Respondent?

Mr. Tonjes: E. A. Tonjes for the Respondent.

The Member: Proceed, sir.

STATEMENT OF CASE ON BEHALF OF PETITIONER

Mr. Kumler: If your Honor please, there are three issues to be decided in this proceeding. The principal issue in the case involves the question of whether 9 individuals who purchased undivided interests in certain potential oil lands are taxable as an association at corporate rates.

In December of 1936——

The Member: What do you mean whether they are taxable at corporate rates? Is the question whether or not they are an association?

Mr. Kumler: Whether they are an association, your Honor.

In December 1936, Mr. L. G. Helm and Mr. Smith, who were residents of Bakersfield, California, were engaged by the Superior Oil Company to purchase certain lands in the San Joaquin Valley. In the course of their duties they discovered [92] the Miller & Lux Land Company—Miller & Lux Inc., rather—which was the seller of the land purchased by the Superior Oil Company, had additional land in the area, about 2400 acres, which was available for sale at some \$15 an acre.

Mr. Helm put a deposit on the land in San Francisco with Miller & Lux with the understanding that the property could be purchased for \$15 an acre, and returned to Bakersfield where he contacted some 8 of his friends and told them that he believed the land had potential oil value. As a result of his opinion and his discussions with them, they each supplied him with a thousand dollars—approximately a thousand dollars—which he used to make a down payment on the land, 2400 acres.

He then requested Miller & Lux to execute or to prepare, rather, their usual form of conditional sales contract which required a down payment of 25 per cent and the balance payable in equal installments over a period of 10 years with interest. He made the down payment of 25 per cent with the money contributed by his friends.

This land, as I say, is in the San Joaquin Valley and is marginal land suitable only for sheep graz-

ing. Some of it has potential oil value. As was the case—or rather, as did the previous owners, Mr. Helm leased the land for sheep grazing purposes and that constituted the first transaction that he had with respect to the land. [93]

Now, at the time he obtained this money from his friends, Mr. Smith gave no receipt for the money and there were no written documents evidencing the agreement between the parties entered into. Mr. Helm took title to the land in his own name. Two of the 8 co-purchasers with Mr. Helm were officers of an Abstract Company, and by nature title conscious. They felt some evidence of their ownership and interest in this should be placed in the public records to protect them in the event Mr. Helm died or became incompetent and because of the fact it would be difficult to prove their interests if such event occurred. A declaration of trust was prepared by Mr. George Bradford, one of the co-purchasers, and it was executed by Mr. Helm as the declarant and by the other 8 co-purchasers as beneficiaries. It set forth the fact that the purchase of the land had been for the benefit of all the parties, among other things, and provided certain things which the instrument is the best evidence of.

Shortly after that time certain agriculturists, Lewis Brothers, approached Mr. Helm and suggested by reason of the fact there was additional water in the area that year the land could be farmed under dry farming processes and they offered to

lease the land on a crop-share basis. Mr. Helm did so again in his own name.

Shortly after that time, about the beginning of 1938, there were new discoveries of oil in the San Joaquin Valley [94] in Kern County and Mr. Helm entered into negotiations with certain oil companies, 5 to be exact. The parties reached an agreement to lease the land which I have referred to to these oil companies in various portions for the purpose of producing oil therefrom if it should be found to exist. In this case also Mr. Helm conducted the negotiations and executed the leases as an individual, not disclosing the interest of the other parties. These leases were put in escrow to await consummation and the leases provided for certain bonus payments.

While they were in escrow, it was discovered that the land was held by Mr. Helm as trustee by reason of the fact that this original trust declaration had been entered into and filed of record. The escrow company refused to consummate the transaction until this matter of trust should be cleared up. Mr. Helm should act as trustee or satisfy the escrow company. So instead of re-executing the agreement as trustee, the parties all got together—that is, the co-purchasers of the land including Mr. Helm got together—and revoked the original declaration of trust. Then Mr. Helm and the oil companies consummated the oil leases and the escrow was completed and the bonus payments made to Mr. Helm and leases delivered to the oil companies.

After that and in about July of 1938 the co-purchasers again felt that some record should be made of the interests [95] of those 8 parties who were not named in the instruments covering the title to the land, so they re-executed a declaration of trust and filed that for record, the purpose being the same as the execution of the original declaration of trust, to protect their interests in the event of the death or incompetency of Mr. Helm.

From that time forward until the present time the trustees' duties had been limited to collecting the sheep grazing rentals and such crop-shares as there were from time to time. No further payments have been made under the leasing agreement since the bonuses were paid. No exploratory wells have been drilled by either the lessors or the lessees.

The second issue in the case is dependent, of course, upon the determination of the one just discussed. If this group of individuals is an association taxable at corporate rates, the question—

The Member: Now, the Commissioner, I take it, has held that it is?

Mr. Kumler: He has so determined, your Honor.

The Member: And you are contesting that?

Mr. Kumler: Yes.

If it is held to be such an association, question arises as to whether a delinquent capital stock tax return is sufficient to give the association credit necessary to wipe out the excess profits tax. The declaration in the delinquent [96] capital stock tax

is sufficient to do so if required by law. That matter has already been before the Board and the courts, on a number of occasions. I don't believe it requires any discussion at this time.

The Member: What is the leading case on that?

Mr. Kumler: I think the leading case is the Del Mar case.

The Member: Yes, that is right.

Mr. Kumler: Del Mar additions.

The third issue of the case is whether or not a single sale of one portion of this property to a single individual at or about the same time as the leases were executed with the oil companies is a sale under circumstances which show that the property was held as stock in trade. It is necessary to make that determination because if the group is held not to be an association, question arises as to whether or not the taxpayers are permitted to apply the limitations of Section 117 of the Revenue Act of 1938 limiting the taxable amount of the capital gain. We feel that the documents themselves are the best evidence of the reason for which this property was acquired, and that a single sale of property acquired to be held for leasing for oil purposes is not indicative of an intention to hold that property for sale to customers.

The Member: That is, you are contending for the Capital [97] Gain character——

Mr. Kumler: Yes, your Honor.

The Member: ——and the Commissioner has determined that ordinary gain is the way it should be treated?

Mr. Kumler: Yes, your Honor, on the assumption that it is stock in trade not subject to capital gain limitations.

I think that about summarizes the Petitioner's position, your Honor.

Mr. Tonjes: In view of that statement, your Honor, I don't think the Respondent need say a great deal. Of course, our position is that, considering the circumstances under which this organization was organized—it was organized, I think, unquestionably for the purpose of making profit and deriving a gain—that it is so similar in its characteristics, its organization and operation, that it is substantially functioning as a corporation and for that reason is taxable as an association.

The Member: Mr. Kumler, you say it is a trust, do you?

I just want to interrupt a second, Mr. Tonjes.

Mr. Kumler: One of the questions in the case, your Honor, as you will recall from my opening statement, the trust was originally executed. Then it was——

The Member: You have to take an affirmative position, do you not, as to what it is; not merely as to what it isn't, but also as to what it is? [98]

Mr. Kumler: If we were compelled to take such an affirmative position at this time, your Honor, I think the definition of this group would be more properly a joint venture because of the limited character or the purposes for which it was formed.

The Member: Do you think you do not have to take an affirmative position?

Mr. Kumler: I don't think I had better say that, your Honor. I believe we do have to take an affirmative position, that that is the position.

The Member: I see.

Mr. Kumler: In all such cases, there is some confusion in the matter of determining just what it is because obviously it purports to be something and the Respondent is taking the position that it is something else.

The Member: Well, you filed a return——

Mr. Kumler: On the partnership form.

The Member: ——as what? As a syndicate?

Mr. Kumler: Yes, your Honor.

The Member: And treating a syndicate, as you understand, as one of those things that is like a partnership?

Mr. Kumler: Yes, your Honor.

The Member: And therefore you filed a partnership return?

Mr. Kumler: Yes. [99]

The Member: Is that right?

Mr. Kumler: That is correct, sir.

The Member: Now, are you pressing that character as the correct character?

Mr. Kumler: Yes, your Honor.

The Member: I see.

The Commissioner said it is an association——

Mr. Kumler: Yes.

The Members: ——taxable as a corporation?

Mr. Kumler: Yes.

The Member: And you say no, that you filed the correct return and you insist upon that?

Mr. Kumler: That is correct, sir.

The Member: I see; that is what I wanted.

Mr. Tonjes: With respect to the remaining issues, namely—well, the next one in order, I presume, would be the issue of whether or not the organization is subject to an excess profits tax or is entitled to such relief as it would be entitled to by reason of having filed a capital stock tax return; and we have attached to the stipulation a copy of the return and a statement that the tax shown thereon has been paid. I think the law on that subject is fairly well crystallized that under the circumstances the filing of a return constitutes an action which would give them a credit.

With respect to the issue of whether or not the capital [100] gain limitation applies, I think counsel has stated the issue clearly in that, and the facts which we have stipulated to will give the Board all the light it needs.

I might say we have included in the stipulation a copy of the returns filed, that is, the partnership returns, which set forth all of the business carried on by the organization, and we also have included the capital stock tax return. They are in all 14 exhibits.

We have attempted to make a complete statement of the manner in which this organization carried on its business so as to give the Board all the information it needs with regard to its functions.

The Member: All right; make your case, Mr. Kumler.

Mr. Kumler: If your Honor please, I would like to offer this stipulation in evidence, and ask that the facts stated in the exhibits attached to the stipulation referred to be received by the Board with the same force and effect as though they had been submitted and received as evidence in open hearing.

The Member: Hand it to the clerk.

Mr. Tonjes: In view of the fact that the exhibits have not been stapled together, your Honor, it might be advisable at this time to have the clerk check all of the numbers and see that they are all complete. There are 14 exhibits altogether, two being the income tax returns. [101]

The Member: Are they exhibits as a part of the stipulation or are they filed as exhibits that the clerk has to mark separately?

Mr. Tonjes: As a part of the stipulation, your Honor.

The Member: So he doesn't have to mark anything except the entire stipulation?

Mr. Tonjes: That is correct.

The Member: All right.

Mr. Tonjes: I merely wanted to have him ascertain the fact they are all present there, not being stapled together.

The Member: If you say that they are all there, he will put an elastic around them and keep them that way.

Mr. Tonjes: Very well, your Honor.

The Member: Anything more, Mr. Kumler?

Mr. Kumler: That constitutes all the evidence, your Honor.

The Member: Have you anything, Mr. Tonjes?

Mr. Tonjes: Nothing further, your Honor.

The Member: Do you want to file a brief in accordance with the rules?

Mr. Tonjes: Yes.

The Member: All right.

The case is submitted.

(Hearing concluded.)

[Endorsed]: U. S. B. T. A. Filed Feb. 18, 1942.

[102]

[Title of Court and Cause.]

PETITION OF TAXPAYERS FOR REVIEW
BY THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT OF A DECISION BY THE TAX
COURT OF THE UNITED STATES

The individuals treated by the Commissioner of Internal Revenue as an "Association" for tax assessment purposes and known as "Helm and Smith Syndicate," by Thomas R. Dempsey, Wellman P. Thayer, Arthur H. Deibert and William L. Kumler, their counsel, hereby file their petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the Decision of the Tax Court of the United States entered on September 10, 1942, and determining deficiencies in petitioners'

Federal income and excess profits taxes for the calendar year 1938, in the amounts of \$5,223.57 and \$30.73 respectively.

Petitioners respectfully show:

I.

JURISDICTION

Petitioners are a group of unincorporated individuals known as "Helm and Smith Syndicate." Their address is 1704 Chester Avenue, Bakersfield, California, c/o M. J. Davis. For the calendar year 1938 said group filed a Federal income tax return on partnership Form 1065, with the Collector of Internal Revenue at Los Angeles, California. Respondent determined that deficiencies in income and excess profits taxes were due from petitioners [103] for the calendar year 1938 and on appeal to the Tax Court of the United States, the Tax Court sustained, by a decision entered on September 10, 1942, in part, respondent's said determination.

Jurisdiction in this Court to review the decision of the Tax Court of the United States is founded upon the provisions of Sections 1141-1146 of the Internal Revenue Code.

II.

NATURE OF THE CONTROVERSY

This controversy arises from a determination by respondent, Commissioner, that under Section 901 of the Revenue Act of 1938 this unincorporated

group, known as "Helm and Smith Syndicate," constituted an association taxable as a corporation. Upon such determination the respondent asserted deficiencies in corporation income and excess profits taxes, for the year 1938, in the amounts of \$5,223.57 and \$3,661.47 respectively.

Respondent's determination was appealed by the taxpayers to the Tax Court of the United States. The appeal was heard at Los Angeles, California, on February 4, 1942, and submitted upon a stipulation of all the facts. On June 26, 1942, the Tax Court entered its Memorandum Opinion sustaining respondent's determination that the taxpayers constituted an association, but holding that since the group had filed a capital stock tax return for the year ended June 30, 1938, the excess profits tax deficiency should be computed by taking the declared value shown therein into account. Pursuant to its said opinion and on September 10, 1942, the Tax Court entered its decision that there are deficiencies in income and excess profits taxes for the year 1938 due from petitioners, in the amounts of \$5,223.57 and \$30.73, respectively.

The group of taxpayers known as Helm and Smith Syndicate hereby [104] appeal to the United States Circuit Court of Appeals for the Ninth Circuit from so much of the Tax Court's decision as finds and decides that the group is an "association" within the meaning of section 901 of the Revenue Act of 1938.

During January of 1937, one L. G. Helm, believ-

ing certain land to have a speculative value for the production of oil, contacted eight of his friends and acquaintances and induced each of them to contribute \$1,000.00 toward a co-purchase of the land. Helm contributed \$1,000.00 on his own behalf making a total of \$9,000.00.

Upon receipt of the contributions of his friends, Helm purchased the land referred to under conditional sales contracts calling for down payments and annual payments on January 8th of each year thereafter until the entire purchase price had been paid.

Helm took title to the property in his own name without disclosing the interests of the other eight contributors. Helm had issued no receipts for the money he received, nor was there any written agreement evidencing the interests of the other eight contributors in the land. All nine parties, however, understood that Helm was taking their individual interests in the land in his name and would handle the property to the common advantage and profit of all.

Certain of the nine said individuals, however, felt that some written evidence of the interests of the parties should be placed on record. Accordingly, on June 29, 1937, a declaration of trust was executed by all the parties which recited, among other things, that L. G. Helm had purchased the land on behalf of the eight named individuals as well as himself; that each of the nine persons had purchased an undivided one-ninth interest in the land

and that [105] Helm held said land in trust to manage, control, sell, convey, lease, or encumber the same. No certificates of interest were provided for. No place of business was established by the instrument. A committee of four out of the nine co-owners was provided for to which the trustee was to look for advice and consent in selling, leasing or encumbering the land.

Notably, however, the instrument gave neither the trustee nor the committee any power to invest and reinvest the proceeds from any sale, lease or other disposition of the property, nor to enter into any business transaction, other than selling, leasing, encumbering or disposing of said land. Each member of the group expressly assumed and agreed to pay his share of any liability for principal and interest which might become payable under the purchase contracts or by reason of any encumbrances thereafter placed on the property including taxes and assessments. No assignment of the interest of any co-owner was valid unless and until the trustee received notice of the assignment together with the assumption by the assignee of the obligations of the assignor as to the interest so assigned.

Early in 1938, Helm, the trustee, negotiated with five oil companies looking toward oil leases of the land. Here, again, Helm carried on all negotiations in his own name without disclosing the trust or the interests of the other eight co-purchasers of the land. Leases were agreed upon between the oil

companies and Helm and placed in escrow. It was then realized that Helm held title as trustee.

In order to avoid the complexities of the trust arrangement the nine parties on May 24, 1938, revoked the trust of June 29, 1937, and Helm again took absolute record title in his own name. The leases were thereafter consummated and the escrows regarding them closed.

Upon consummation of the leases by Helm, the five oil companies paid [106] leasing bonuses totaling \$29,635.00. On or about July 1, 1938, Helm sold two parcels of the land to one, C. E. Houchin, realizing a profit of \$10,078.30 again dealing in his own and his wife's names. The foregoing income together with other minor items for the year 1938 is the basis of the tax deficiencies asserted by respondent.

With the proceeds from the sales and oil lease bonuses, L. G. Helm paid the balance of the purchase price due under the purchase contracts covering the land and received unconditional title thereto.

Thereafter, on July 15, 1938, the nine co-owners, desiring again to establish record title to their interests, executed a second declaration of trust covering the land subject to the leases referred to above. This declaration of trust was in substantially the same terms as the declaration of June 29, 1937, including the provisions for assumption by the various interest holders of any liabilities arising from any encumbrances placed on the property.

Except for small amounts of grazing and agricultural rentals no further income was realized from the land. No oil wells were, or to date have been, drilled on the land no oil royalties have become due or been received under the oil leases.

No regular place of business has been maintained and the only books kept by the venture were kept by Helm in his personal cash book.

It is apparent that there are two distinct periods in 1938 during which the legal relationship of the nine individuals were, for the purposes here in question, substantially different.

(A) During the period from May 24, 1938 to July 15, 1938 no express written trust agreement was in effect. The rights, powers and obligations of the parties necessarily would be those implied by California law from all the circumstances. It was during this period that the income giving rise to the [107] taxes in question was realized.

(B) During the periods January 1, 1938 to May 24, 1938, and from July 15, 1938 to December 31, 1938, express written trust agreements were in effect which defined the rights, powers and obligations of the parties and must constitute as the basis of any classification of the group.

It is the position of the taxpayers that, as a group, they did not constitute an association during either of the two periods for the following reasons:

(A) During the period when no express written trust agreement was in effect:

(1) There were not and could not have been any

transferable interests similar to shares of stock because none were created in fact or in law. The only assignable property held by any of the nine parties was his interest as an equitable co-owner of land, absolute record title of which was in L. G. Helm, his agent and co-purchaser.

(2) Since there was no attempt to limit their liability to the property embarked in the business, each of the co-owners was personally liable for any debts or obligations incurred by Helm, the active agent, if contracted within the scope of his authority.

(3) Death, or withdrawal of any of the nine co-contributors would have destroyed the venture, just as in the case of an ordinary agency, partnership or joint adventure because Helm's authority to act for such member would thereby have been revoked.

(4) Title to the land was held, as of record, by L. G. Helm absolutely; but actually he held title as an agent, partner or co-adventurer.

(5) Centralized management existed only to the extent that Helm acted as a common agent for all the co-owners of interests in the land. [108]

(B) During the periods when trust agreements were in effect there was no "association" within the meaning of the revenue laws because:

(1) Liability of each interest holder was unlimited since each, by executing the trust instrument, assumed and agreed to pay any liability for principal and interest arising out of any encumbrances placed on the property. Such encumbrances

included taxes, assessments, (by express provision) liens, mortgages, judgments and the like by necessary implication.

(2) No certificates or other transferable interests, similar to corporate stock were created. Each interest holder's right to assign his interest was merely that of any owner of property whose interest is evidenced by a written instrument. Even so, such assignment was subject to the conditions that the assignee give notice to the trustee and assume all the obligations of the assignor respecting the assignor's interest.

(3) Legal title was held by Helm as trustee, not in the name of "Helm and Smith Syndicate."

(4) As every trust under California law is revocable unless expressly made irrevocable, any one of the members of the group, had the power to revoke the trust as to himself and his interest in the land, and could thereby have withdrawn from and destroyed the venture.

The respondent's position can best be ascertained from his statement in his brief before the Tax Court that the nine individuals comprising the syndicate, "* * * associated themselves and their resources and entered into a common effort for the conduct of a business for profit; that the rights and obligations of the beneficiaries are similar to those of a stockholder of a corporation, and that the petitioner operated substantially as, and served the purpose of, a corporation during the taxable year, * * *."

The Tax Court's decision is based upon the position that while the [109] instant case is "border line" the syndicate here is more like the taxpayer in *Thrash Lease Trust v. Commissioner*, 99 Fed. (2d) 925.

The taxpayers therefore view the controversy thus:

If this is a border line case, how—(1) where liability of the participants was not limited to the property embarked in the business, and (2) where, when the income was realized, there was no trust agreement defining the rights and obligations of the parties, and (3) where one person, holding absolute record title to land in his own name, acts for his undisclosed co-owners of land, and (4) where death or withdrawal of any of the co-owners would have revoked the agency and destroyed the venture, and, (5) where the only assignability of interest was even less than the right to assign, which every owner of property has,—can it be said that the nine individuals here either resorted to or enjoyed the benefits of the corporate form of organization either in form or in substance?

III.

Your petitioners, being aggrieved by the findings of fact and conclusions of law contained in said decision and opinion of the Tax Court of the United States desire to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit.

IV.

In making its decision, as aforesaid, the Tax Court of the United States committed the following errors upon which your petitioners rely as the basis of this proceeding:

(1) The Tax Court erred in failing and omitting to find from stipulated evidence establishing the same that the rights, powers, privileges and obligations of the nine members of the group were substantially and materially different during the period from May 24, 1938 to July 15, 1938, (during which [110] period no trust agreement was in effect and in which the income here involved was realized) than were the rights, powers, privileges and obligations of said members during the portions of the year 1938 in which trust agreements were in effect.

(2) That with respect to the period during which the income in question was realized, namely period from May 24, 1938 to July 15, 1938, during which no express trust agreement was in effect as between the members of the group:

(a) The Tax Court erred in failing and omitting to make any finding of fact from the evidence as to the personal liabilities and obligations of the nine members of the group for debts and obligations incurred by Helm in the management of the property.

(b) The Tax Court erred in failing and omitting to find from evidence sufficient to support the same, that during said period the nine members

of the group were personally liable for any debts and obligations incurred by Helm in the management of the property.

(c) The Tax Court erred in finding and concluding that during said period the interests of the nine members of the group were divisible and assignable as in the case of corporate stock and in failing and omitting to find and conclude from the evidence that during said period the interests of the nine members of the group were divisible and assignable only to the extent that the interests of any co-owner of property or partner are divisible and assignable.

(d) The Tax Court erred in failing and omitting to find and conclude from the evidence that during said period any member of the group could have revoked Helm's authority to act for him and could have withdrawn therefrom, and that the death, or assignment of the interest of any member of [111] the group would have revoked the authority of L. G. Helm to bind such member and that the venture would thereby have been destroyed.

(e) The Tax Court erred in failing and omitting to find and conclude from the stipulated evidence that during said period L. G. Helm held absolute record title to the land owned by the nine individual members of the group, as their managing agent, co-partner or co-adventurer, for the purpose of entering into transactions with respect to which the said members were to share equally the profits and losses therefrom.

(f) The Tax Court's findings and conclusions that during said period the taxpayer-group had substantially the attributes of a corporation, are contrary to the stipulated evidence and are not supported by any evidence.

(3) That with respect to the periods during which express trust agreements were in effect as between the members of the group, namely the periods from January 1, 1938 to May 24, 1938 and from July 16, 1938 to December 31, 1938:

(a) The Tax Court erred in failing and omitting to find from the stipulated evidence that by express agreement the members of the group had assumed and agreed to pay the amount of any liability for principal and interest incurred by Helm in the performance of his duties.

(b) The Tax Court erred in finding that the interests of the members of the group were divisible and assignable in a manner similar to corporate stock and in failing and omitting to find from the stipulated evidence that the interests of the members of the group were divisible and assignable only upon the assumption by the assignee of the obligation of the assignor to pay the amount of any principal or interest for which such assignor might be liable with respect to the interest assigned.

(c) The Tax Court erred in failing and omitting to find and [112] conclude from the stipulated evidence that during said periods, any member of the group, as a trustor under the trust agreement, had the power to revoke the trust as to him-

self and his interest in the property and could have withdrawn from the group.

(d) The Tax Court erred in finding from the evidence that the trust instrument of June 29, 1937, was revoked for convenience in title insurance and in failing and omitting to find from the evidence that said trust instrument was revoked because the members of the group did not wish to do business pursuant to the terms of said trust.

(4) The Tax Court erred in finding and concluding from the evidence that the fact that title to the property, owned by the members of the group, was held in one name establishes association status.

(5) The Tax Court erred in failing to find and conclude, as a matter of law, that the group was either (1) a tenancy in common acting through a common agent, or (2) a joint adventure, or (3) a general partnership.

(6) The Tax Court erred in finding and concluding, as a matter of law, that petitioner syndicate was an association like the taxpayer in *Thrash Lease Trust v. Commissioner*, 99 Fed. (2d) 925.

(7) The Tax Court erred in finding and concluding, as a matter of law, that petitioner syndicate had such attributes and characteristics as would bring the group within the definition of an "association" as that term is used in Section 901 of the Revenue Act of 1938.

(8) The Tax Court erred in finding and concluding that there are deficiencies in income and

excess profits taxes due from petitioners for the year 1938.

Wherefore petitioners pray that this Honorable Court may review the [113] decision and order of the Tax Court of the United States and reverse, modify or set aside the same, and for the entry of such further orders and decisions as the Court shall deem meet and proper in accordance with the law.

THOMAS R. DEMPSEY
WELLMAN P. THAYER
ARTHUR H. DEIBERT
WILLIAM L. KUMLER

Counsel for Petitioner,
1104 Pacific Mutual Build-
ing, Los Angeles, California

(Duly Verified.)

[Endorsed]: Filed Dec. 7, 1942. [114]

[Title of Court and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To: J. P. Wenchel, Chief Counsel,
Bureau of Internal Revenue,
Washington, D. C.

Please take notice that petitioner, on the 7th day of December, 1942, filed with the Clerk of the Tax Court of the United States at Washington, Dis-

trict of Columbia, a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated: December 7, 1942.

THOMAS R. DEMPSEY

WELLMAN P. THAYER

ARTHUR H. DEIBERT

WILLIAM L. KUMLER

Counsel for Petitioner,

1104 Pacific Mutual Building,
Los Angeles, California

Service of petition for review and the above notice is acknowledged this 7th day of December, 1942.

By J. P. WENCHEL

Attorney for Respondent

[Endorsed]: Filed Dec. 7, 1942. [115]

United States Circuit Court of Appeals
For the Ninth Circuit

Docket No. 107125

HELM and SMITH SYNDICATE,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

DESIGNATION OF CONTENTS OR RECORD
ON REVIEW

To: B. D. Gamble, Clerk, the Tax Court of the
United States:

Will you kindly prepare in accordance with the law and rules of said Court, a transcript of the record in the above entitled cause, such record to include:

(1) The docket entries of the proceedings before the Tax Court;

(2) The material pleadings before the Tax Court;

(3) The Memorandum Opinion of the Tax Court; entered June 26, 1942;

(4) The decision of the Tax Court entered September 10, 1942;

(5) The Stipulation of Facts entered into by petitioner and respondent before the Tax Court together with all exhibits referred to therein and attached thereto;

(6) The reporter's official report of the proceedings before the Tax Court;

(7) The Petition for Review by the United States Circuit Court for the Ninth Circuit of the decision of the Tax Court of the United States and the Notice of Filing Petition for Review.

(8) This Designation of Contents of the Record on Review.

Dated this 14th day of December, 1942. [116]

THOMAS R. DEMPSEY
WELLMAN P. THAYER
ARTHUR H. DEIBERT
WILLIAM B. KUMLER

Counsel for Petitioner on Review,
1104 Pacific Mutual
Building, Los Angeles,
California,

Personal service of the above Designation of Contents of Record on Review is hereby acknowledged this 15th day of December, 1942.

J. P. WENCHEL

Counsel for Respondent on
Review

[Endorsed]: Filed Dec. 15, 1942. [117]

The Tax Court of The United States
Washington

Docket No. 107125

HELM and SMITH SYNDICATE,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States, do hereby certify that the foregoing pages, 1 to 117, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 2d day of January, 1943.

[Seal]

B. D. GAMBLE

Clerk, The Tax Court of the
United States.

[Endorsed]: No. 10352. United States Circuit Court of Appeals for the Ninth Circuit. Helm and Smith Syndicate, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed January 19, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10352

HELM and SMITH SYNDICATE,
Petitioner on Review,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

POINTS UPON WHICH PETITIONER WILL
RELY UPON REVIEW

I.

Upon review of the above entitled proceeding, petitioner will rely upon the points raised by the assignments of error set forth in Section IV of its

Petition for Review of the Decision of the Tax Court of the United States.

Dated this 27 day of January, 1943.

THOS. R. DEMPSEY
WELLMAN P. THAYER
ARTHUR H. DEIBERT
WILLIAM L. KUMLER

Attorneys for Petitioner,
1104 Pacific Mutual Build-
ing, Los Angeles, California

Personal service of the above statement of Points Upon Which Petitioner Will Rely Upon Review is hereby acknowledged this 8th day of February, 1943.

J. P. WENCHEL

Chief Counsel, Bureau of In-
ternal Revenue

[Endorsed]: Filed Feb. 15, 1943.

No. 10352

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

HELM AND SMITH SYNDICATE,

Petitioner,

v's.

COMMISSIONER OF INTERNAL REVENUE.

Respondent.

PETITIONER'S OPENING BRIEF.

THOMAS R. DEMPSEY.

WELLMAN P. THAYER.

ARTHUR H. DEIBERT.

WILLIAM L. KUMLER.

1104 Pacific Mutual Building, Los Angeles.

Counsel for Petitioner.

FILED

APR 10 1949

PAUL H. O'BRIEN

Parker & Baird Company, ~~Law~~ Printers, Los Angeles

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No. 10352

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

HELM AND SMITH SYNDICATE,

Petitioner,

v's.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITIONER'S OPENING BRIEF.

Opinion Below.

The opinion of the Tax Court of the United States, the only previous opinion in this case, was a memorandum opinion and is not officially reported. It appears in the Record before this Court at pages 18 to 21, both inclusive.

Jurisdiction.

This petition for review [R. 226-240] involves federal income taxes for the calendar year 1938. The return in respect of which the question of tax liability arises was filed with the Collector of Internal Revenue at Los Angeles, California. [R. 196.]

On February 6, 1941, respondent mailed a notice of deficiency to petitioners in the amount of \$8,885.04. [R. 13-16.]

Within 90 days thereafter and on May 2, 1941 [R. 1], taxpayers filed their petition [R. 3-16] with the Tax Court of the United States for a redetermination of said deficiency as provided by section 272 of the Internal Revenue Code.

The case was submitted to the Tax Court upon a stipulation of all the facts [R. 22-32] on February 4, 1942. [R. 2.]

The decision of the Tax Court [R. 21] sustaining respondent's determination in part, was entered September 10, 1942. [R. 3.]

The cause has been brought to this Court for review by a petition [R. 226-240] filed December 7, 1942, pursuant to the provisions of sections 1141-1142 of the Internal Revenue Code.

Statement of the Case.

Petitioners are a group of unincorporated individuals with a business office at 1704 Chester Avenue, Bakersfield, California, c/o M. J. Davis. [R. 16.] Believing themselves to have organized a partnership or joint adventure, petitioner-group¹ filed an income tax return with the Collector of Internal Revenue on partnership return form 1065, describing their organization as "Helm & Smith Syndicate." [R. 196.]

¹Hereinafter, for brevity, referred to as petitioners.

Respondent thereafter determined that petitioners constituted a "corporation" as that term is defined in section 901 of the Revenue Act of 1938 and asserted a liability for corporation income and excess-profits taxes against petitioners for the calendar year 1938. [R. 15.]

Petitioners appealed to the Tax Court of the United States, which upheld respondent's determination that petitioners were a corporation under section 901 of the Act. The Tax Court found, however [R. 20], that because petitioners had subsequently filed a capital stock tax return for the year ended June 30, 1938, the excess-profits tax liability asserted by respondent should be computed by giving effect to the declared value shown therein. As a result of its decision the Tax Court sustained income and excess-profits tax deficiencies against petitioners in the amount of \$5,223.57 and \$30.73, respectively.

The petition for review and the errors cited therein are directed to the Tax Court's conclusion that petitioners constituted a "corporation" within the purview of section 901 of the 1938 Revenue Act.

All the facts were stipulated. There is, therefore, no controversy as to what the facts *are*. Petitioners contend that the legal conclusions which the Tax Court drew from the facts are erroneous, as a matter of law, and require reversal by this Court.

The facts are as follows:

During 1936 L. G. Helm, believing certain land to have oil possibilities, obtained an option to buy the land at \$15.00 per acre from Miller & Lux, Inc., the owners. [R. 22.]

In January, 1937, he contacted eight of his friends and induced each of them to contribute \$1,000.00 to be used in purchasing the land. [R. 23.] He gave no receipts for the money so obtained, nor was any formal writing executed specifying the interests of the parties. It was understood, however, that each of the parties was acquiring a one-ninth interest in the property and that Helm would handle it to the common advantage and profit of all. [R. 24.]

Using the monies contributed by the parties, Helm exercised his option to buy the land and entered into a conditional purchasing agreement with Miller & Lux calling for 25% of the purchase price down; annual payments of 10% of the balance, and interest on unpaid balances at 6% per annum. Helm took title to the land in his own name. [R. 24.]

Thereafter he executed sheep grazing leases, covering the property, at twenty-five cents per acre, which he accounted for to the other owners in accordance with their interests. [R. 24.]

Two of the co-purchasers, however, felt that some documentary evidence should be prepared which would disclose the interests of the various parties in the venture. A declaration of trust was prepared and entered into by all of the nine parties under date of June 29, 1937. [R. 25.] This instrument appears in this record at pages 54-65.

Among other things it recited:

1. That Helm, as purchaser, had entered into agreements with Miller & Lux regarding the land. [R. 54.]

2. That whereas Helm in executing said agreements had acted for eight (named) individuals as well as himself,

“each of such persons purchasing and receiving an undivided one-ninth interest under said contracts and each of said persons paying on account of the consideration * * * an equal one-ninth thereof, and each of said persons now hereby agreeing * * * that they will pay and contribute on account of all future payments required by said contracts and otherwise as hereinafter provided, an equal one-ninth each thereof.” [R. 56-57.]

3. That Helm should hold legal title to the property in trust for each of the nine named parties in specified portions with powers “to manage and control the same, to sell, convey, lease, including oil and gas leases, * * * to encumber the same * * *.” [R. 57-58.] No power to invest and reinvest the proceeds either of conveyances or leases was granted to Helm.

4. That each of the interest holders “shall provide their proportion of the funds necessary” for the payment of

“any amount of principal and interest which may become due and payable under the terms and conditions of said [purchase] contracts *and also upon any encumbrances hereinafter placed upon said property including taxes and assessments* * * *.” (Italics ours.) [R. 58-59.]

5. No assignment of any interest was to be valid until a written assumption of all obligations of the assignor should be received by the trustee. [R. 60.]

6. A committee of four of the co-owners was to have the power to direct the trustee in the performance of his rights and duties. [R. 60-61.]

No certificates of interest or readily assignable shares were created. [R. 54-63.]

Thereafter Helm executed crop-sharing leases with parties desiring to dry-farm part of the land. [R. 25.]

In January of 1938 Helm called for and received from the co-owners their pro-rata shares of the principal and interest due Miller & Lux upon the purchase contracts. [R. 25-26.]

In May of 1938, Helm negotiated oil leases with five oil companies. Terms were tentatively agreed upon and the agreements deposited in escrow. It was then found that Helm held title under the trust declaration described above. [R. 26-27.]

“For the purpose of consummating the leasing agreements and of allowing the title insurance policies to be issued without Mr. Helm’s being required to perform the usual formalities required of a trustee, the trust declaration was revoked under date of May 24, 1938.” [R. 27.]

The leases with the five oil companies were thereupon consummated. From the lessee-oil companies the petitioners received leasing bonuses totalling \$29,635.00. [R. 205.]

During this period 451.53 acres of the land were sold outright for a profit of \$10,078.30. [R. 204.]

The proceeds of the leases and sales were used to pay off the balance due on the purchase contracts with Miller & Lux, Inc. [R. 28.]

Thereafter the parties executed a second trust declaration under date of July 15, 1938. [R. 29.] This instrument contained substantially the same provisions as the declaration of June 29, 1937, including the assumption by the parties of the obligation to pay the amount of any principal and interest due upon any encumbrances subsequently placed upon the property. [R. 180-195.]

Helm thereafter distributed to each of the co-owners his proportionate share of the monies in excess of what he had used to defray expenses and to pay the balance owing on the purchase price of the land. [R. 29.]

Questions Presented.

The ultimate question before this Court in the instant proceeding is:

Were the rights, powers, privileges and obligations of petitioners of such a character that, as between themselves and outside parties, their organization had the characteristics of the corporate form of business enterprise?

The ultimate question necessarily depends upon the disposition of certain subordinate questions. It is petitioners' position that each of these questions also involves the legal consequences ascertainable from facts which are not in dispute and which therefore present pure questions of law.

The subordinate questions are:

(a) Where all the facts are stipulated and where the issue involves the legal consequences of such facts, is the Tax Court, as a matter of law, privileged to disregard material facts and make no findings upon legal issues

which are necessary elements to a correct determination of the ultimate question?

(b) Where a number of individuals pool their interests in a certain piece of property, with the understanding that one of their number will manage the same to the common profit and advantage of all, and where the liability of each for the obligations incurred by the managing agent is not limited, and where the death or withdrawal of any one of the parties would revoke the authority of the agent to act for him, are they not, as a matter of law, merely co-tenants with a common agent or, at most, joint adventurers?

(c) Where, after pooling their interests in a certain piece of property, a number of individuals, in order to create evidence of their interest therein and to define the rights, powers, privileges and obligations, arising from their relationship, draw an instrument which is, in form, a trust declaration but which (1) does *not* limit the liability of the members to the property embarked in the venture, (2) does *not* create readily transferrable interests, (3) leaves to each member the power to terminate and withdraw, have such individuals, as a matter of law, created anything more than agency relationship, or, at most, a joint adventure?

(d) Where record legal title to property is held in the name of one of the nine co-owners of said property, as managing agent, does such fact constitute, as a matter of law, a basis for ascribing corporate characteristics to the group?

(e) Where the interests of nine individuals in certain land are evidenced solely by a written agreement signed by all and not by any shares of stock, certificates of interest

or participation or the like, and where, as a condition precedent to any valid assignment of interest, the assignee must assume the assignor's obligations to pay the amount of any sums which may have then, or thereafter, become an encumbrance thereon, are the interests of the parties, as a matter of law, divisible and assignable in the manner of corporate stock?

Specification of Errors to be Urged.

In reaching its decision the Tax Court erred in the following respects:

(1) The Tax Court erred in failing and omitting to find from stipulated evidence establishing the same that the rights, powers, privileges and obligations of the nine members of the group were substantially and materially different during the period from May 24, 1938, to July 15, 1938 (during which period no trust agreement was in effect and in which the income here involved was realized) from the rights, powers, privileges and obligations of said members during the portions of the year 1938 in which trust agreements were in effect.

(2) That with respect to the period during which the income in question was realized, namely, the period from May 24, 1938, to July 15, 1938, during which no express trust agreement was in effect as between the members of the group:

(a) The Tax Court erred in failing and omitting to make any finding from the evidence as to the personal liabilities and obligations of the nine members of the group for debts and obligations incurred by Helm in the management of the property.

(b) The Tax Court erred in failing and omitting to find from evidence sufficient to support the same, that during said period the nine members of the group were personally liable for any debts and obligations incurred by Helm in the management of the property.

(c) The Tax Court erred in finding and concluding that during said period the interests of the nine members of the group were divisible and assignable as in the case of corporate stock, and in failing and omitting to find and conclude from the evidence that during said period the interests of the nine members of the group were divisible and assignable only to the extent that the interests of any co-owner of property or partner are divisible and assignable.

(d) The Tax Court erred in failing and omitting to find and conclude from the evidence that during said period any member of the group could have revoked Helm's authority to act for him and could have withdrawn therefrom, and that the death, or assignment of the interest, of any member of the group would have revoked the authority of L. G. Helm to bind such member and that the venture would thereby have been destroyed.

(e) The Tax Court erred in failing and omitting to find and conclude from the stipulated evidence that during said period L. G. Helm held absolute record title to the land owned by the nine individual members of the group, as their managing agent, co-partner or co-adventurer, for the purpose of entering into transactions with respect to which the said members were to share equally the profits and losses therefrom.

(f) The Tax Court's findings and conclusions that during said period the taxpayer-group had substantially the attributes of a corporation are contrary to law.

(3) That with respect to the periods during which express trust agreements were in effect as between the members of the group, namely, the periods from January 1, 1938, to May 24, 1938, and from July 16, 1938, to December 31, 1938:

(a) The Tax Court erred in failing and omitting to find from the stipulated evidence that by express agreement the members of the group had assumed and agreed to pay the amount of any liability for principal and interest incurred by Helm in the performance of his duties.

(b) The Tax Court erred in finding that the interests of the members of the group were divisible and assignable in the form and manner of corporate stock.

(c) The Tax Court erred in failing and omitting to find and conclude from the stipulated evidence that during said periods, any member of the group, as a trustor under the trust agreement, had the power to revoke the trust as to himself and his interest in the property and could have withdrawn from the group.

(d) The Tax Court erred in finding from the evidence that the trust instrument of June 29, 1937, was revoked for convenience in title insurance, and in failing and omitting to find from the evidence that said trust instrument was revoked because the members of the group did not wish to do business pursuant to the terms of said trust.

(4) The Tax Court erred in finding and concluding from the evidence that the fact that title to the property, owned by the members of the group, was held in one name establishes association status.

(5) The Tax Court erred in failing to find and conclude, as a matter of law, that the group was either (1)

a tenancy in common acting through a common agent, or (2) a joint adventure, or (3) a general partnership.

(6) The Tax Court erred in finding and concluding, as a matter of law, that petitioner syndicate was an association like the taxpayer in *Thrash Lease Trust v. Commissioner*, 99 Fed. (2d) 925.

(7) The Tax Court erred in finding and concluding, as a matter of law, that petitioner syndicate had such attributes and characteristics as would bring the group within the definition of an "association" as that term is used in Section 901 of the Revenue Act of 1938.

(8) The Tax Court erred in finding and concluding that there are deficiencies in income and excess profits taxes due from petitioners for the year 1938.

Law Involved.

The instant case arises under the provisions of Section 901(a). The pertinent portion of said section reads as follows:

"When used in this Act—

* * * * *

"(2) The term 'corporation' includes associations, joint-stock companies, and insurance companies.

"(3) The term 'partnership' includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this Act, a trust or estate or a corporation; * * *"

Summary of the Argument.

In cases of this character the issue before the Court is always whether, although in form, a business organization is something else, in substance it has the characteristics (and hence the economic benefits) of the corporate form of organization.

The characteristics which have repeatedly been held by the courts to be those of a corporation are:

1. Title to property embarked in the enterprise held in the name of an entity which continues even though its participants die or assign their interests.
2. Continuity uninterrupted by death or withdrawal of participants.
3. Limitation of liability of participants to property embarked in the undertaking.
4. Creation of shares or certificates of interest assignable as in the case of corporate stock.
5. Centralized management and control of the undertaking.

While state law does not determine whether an organization is a corporation, partnership, trust, or tenancy-in-common for the purpose of classifying it for federal income taxes, the rights, powers, privileges and obligations enjoyed and borne by the members *must* be determined therefrom; for it is from state law that these characteristics stem.

In the instant case the taxable year is divided into two periods: (1) that during which no written agreement was in effect between the participants, and (2) that during which a written agreement was in effect. The income

which is the basis of the controverted tax was realized during the period during which no written agreement was in effect.

During that portion of the taxable year in which no written agreement was in effect the legal relationship of the nine parties had the following characteristics:

1. Legal title to the land owned by the nine persons was held as of record in the name of one of the nine parties, Helm.

2. Helm had authority from each of the other parties to enter into certain leasing and selling agreements relating to the land for the benefit of all.

3. Each of the nine parties would have been bound by any agreement made by Helm, acting within the scope of his authority.

4. Any one or more of the nine parties could have revoked, and the death of any of the nine parties would have revoked, Helm's authority to act for him, since Helm acted solely with their consent.

5. There were no divisible and assignable evidences of ownership which resembled corporate stock, because there were no evidences of ownership in existence at all.

6. The parties did *not*, by agreement or otherwise, limit to the property embarked in the venture their liability for obligations incurred by Helm in the scope of his authority.

Where an organization has the characteristics noted above, it has *none* of the characteristics of a corporation.

During that portion of the taxable year in which a written agreement was in effect, the legal relationship of the parties had the following characteristics:

1. The agreement was, in form, a trust declaration by Helm.

2. The powers bestowed upon Helm were limited to holding, controlling, managing, selling, leasing, conveying and encumbering certain described real property. No authority was granted to invest and reinvest the proceeds of any transactions or to carry on any business other than that relating to the specified powers.

3. Personal liability of the participants was not limited to the property embarked in the venture.

4. No divisible and assignable shares, certificates or other evidences of interest comparable to corporate stock were created.

5. Under the law of California the trust could have been revoked at any time by any member as to his interest. Revocation would have destroyed the continuity of the organization.

Petitioners contend that in neither period of the taxable year were the characteristics of their legal relationship such that, as a matter of law, the group constituted an association as contemplated by section 901 of the 1938 Revenue Act.

REVENUE ACT OF 1938.

Argument.

The Tax Court, in its opinion, states that a “connotative” definition of the statutory term “association” has never been available and that the outline of the term is not clear. [R. 20.] Nevertheless, the Courts on numerous occasions have held that the term “association,” as used in the law, connotes certain legal characteristics which must appear if an organization is to be classified as a corporation under the law.

These characteristics were first enumerated in *Morrissey v. Commissioner*¹ by the United States Supreme Court and have been cited many times since in cases involving this issue. This Honorable Court has described them thus:²

“Thus it is said, in substance, that a corporation, as an entity, holds the title to the property embarked in the undertaking; it furnishes centralized management through representatives; it insures continuity of enterprise; it facilitates the transfer of beneficial interests and the introduction of large numbers of participants; and it permits the limitation of personal liability of participants to the property embarked in the undertaking.”

In our view of this case, the nature of petitioners’ organization prior to May 24, 1938, and after July 15,

¹296 U. S. 344, 56 S. Ct. 289, 80 L. Ed. 263.

²*Commissioner v. Gerstle*, 95 F. (2d) 587, 589. See also, *Lewis & Co. v. Commissioner*, 301 U. S. 385, 389, 57 S. Ct. 799, 81 L. Ed. 1174; *Commissioner v. Gibbs-Preyer Trusts Nos. 1 and 2*, 117 F. (2d) 619, 624; *Commissioner v. Rector & Davidson*, 111 F. (2d) 332, 333; *Thrash Lease Trust v. Commissioner*, 99 F. (2d) 925, 928.

1938, is unimportant, although, alternatively, petitioners will demonstrate that during those periods the essential elements of the corporate enterprise were missing, as a matter of law.

It is the character of an organization at the time the income is realized that determines the classification under which that income is to be taxed.

The income under consideration was realized in the interim from May 24, 1938, to July 15, 1938, during which period *there was no written agreement of any kind in effect between the parties.*

The legal consequences of this state of affairs were that while absolute title to the land was in Helm, as of record, the other eight parties were equitable co-tenants with him; that Helm's right to deal with the property required the authority and consent of *each* of the eight other co-owners acting for himself as a principal; that in authorizing Helm to act, each of the eight parties individually appointed Helm his agent; that *each* co-tenant had the legal right and power to terminate the agency at will, regardless of the acts of the other co-tenants, and could have demanded and obtained partition of the property and title to a one-ninth part thereof; that had they desired, one or more of the co-tenants could have discharged Helm as agent and appointed a different agent; that the death, bankruptcy, or incompetency of any co-tenant or of Helm would have terminated the agency as to such co-tenant; that each co-tenant was bound by any acts and personally liable for any obligation incurred by Helm acting within the scope of his authority, and, that if any co-tenant had assigned his interest, the agency, being personal and confidential, would have been terminated.

These features of the relationship of petitioners at the time the income was realized have none of the earmarks of corporate organization. In order to emphasize and clarify these characteristics we will analyze them in the argument which follows by applying the legal tests announced in the *Morrissey* case, *supra*, and followed in principle since that decision.

I.

During the Period in Which No Written Agreement Was in Effect, Petitioners' Organization Had the Legal Characteristics of a Co-tenancy or Joint Adventure.

In a very recent case¹ the U. S. Supreme Court held that although the Board of Tax Appeals² is the trier of the facts in cases before it, it must reach its conclusions by applying to such facts correct legal standards and tests.

In the instant case the Tax Court not only applied incorrect legal standards to the stipulated facts but, in some cases, applied no standards at all.

(a) HOW LEGAL TITLE TO THE PROPERTY WAS HELD.

During this period, legal title to the land was held, as of record, by Helm, absolutely. [R. 28.] Helm was not a trustee under an express written trust *because there was none in existence*. At most he was a constructive trustee by operation of law.

The Tax Court should have found that, as a matter of law, legal title was not held by a continuing entity since

¹*Helvering v. American Dental Co.*, No. 303, Oct. Term, 1942, March 1, 1943.

²Now the Tax Court of the United States. Section 504, Revenue Act of 1942.

Helm, the individual, was certainly mortal. Had he died or become incompetent, court proceedings would have been required to establish, as of record, the interests of the eight other co-owners in the land. The shareholders of a corporation obviously incur no such hazard and petitioners definitely did not enjoy the benefits of corporate organization in this respect.

The Tax Court said:

“Title to the property is in one name.” [R. 20.]

Such a holding means nothing. Title to property is often in “one name” in situations where an association could not possibly exist. An agent may hold title in his name for the benefit of his principals.¹ A partner may hold title to partnership property in his own name.²

It is perfectly apparent that the holding of title by Helm, an individual, was not a correct test of the existence of the corporate form of organization.

(b) CONTINUITY OF THE ORGANIZATION.

The Tax Court stated no conclusion regarding this matter although it has always been regarded as one of the essential tests of the corporate form of organization.³

During the period in question Helm's authority to sell and lease the property was solely that of an agent or co-partner of the petitioners. His death, or the death of any of the other co-owners, would have revoked his authority to act as a matter of law,⁴ and the continuity of the enter-

¹*Fleming v. Dolfin*, 214 Cal. 269, 4 Pac. (2d) 776.

²California Civil Code, Section 2404.

³*Morrissey v. Commissioner*, *supra*, page 359; *Commissioner v. Gerstle*, *supra*, page 589.

⁴California Civil Code, Sections 2355, 2356 and 2403.

prise would have been interrupted.¹ Any one of petitioners could have revoked Helm's authority to act for him and could have demanded a conveyance of his interest. Such lack of continuity establishes as a legal proposition the non-existence of the corporate form of organization, for one of the chief elements and benefits of the corporate organization is the immortality of the enterprise regardless of death, whim, or financial condition of its participants.

(c) CHARACTER OF THE MANAGEMENT.

The Tax Court stated:

"Petitioner is a group collectively engaged in a business enterprise conducted by a central management and control." [R. 20.]

That conclusion is not in accord with the facts. Admittedly every business, corporate or otherwise, must be conducted by someone acting on behalf of the participants. This is as true of sole proprietorships and partnerships as it is of corporations. The term "central management and control" means more than that one partner or an agent is given the power to act for the other partners or his principals.

The test which the Tax Court should have used was whether Helm acted as agent for his co-adventurers or principals, or whether he acted in the manner of corporate officers or directors.

Moreover in the absence of the other controlling features of corporate organization, centralized management

¹Assuming Helm was acting as a co-adventurer or partner as distinguished from an agent, his death, bankruptcy, etc., would have dissolved the partnership and revoked his authority to act. California Civil Code, Section 2425.

and control is not sufficient, as a matter of law, to establish corporate or association status.²

(d) TRANSFERABILITY OF INTERESTS.

The Tax Court held:

“Participating interests are divisible and assignable.” [R. 20.]

This conclusion, as in the case of the others noted above, means nothing as a matter of law. All interests in property of every character are divisible and assignable unless the creator of the interest provides otherwise.

The correct test in cases of this type is whether the interests of the participants are divisible and assignable *in the manner that corporate stock is divisible and assignable*.

In *Commissioner v. Gerstle*, *supra*, at page 589, this Circuit Court stated the correct legal principle:

“Their beneficial interests were not readily or conveniently transferable.”

The interests of the participants here were created only by an oral understanding between the participants that Helm should execute leases and sales of the property for the common advantage of all. [R. 24.]

As such, the interests of the participants, during the period under consideration, were not evidenced by anything that could have been divided or assigned without the owners' drawing a specific contract to that effect. Nothing analogous to a divisible or assignable share of corporate stock was in existence.

²See *Commissioner v. Gerstle*, *supra*, page 589; *Commissioner v. Gibbs-Preyer Trusts Nos. 1 & 2*, *supra*, page 624; *Lewis & Co. v. Commissioner*, *supra*, page 388; *Commissioner v. Rector & Davidson*, *supra*, page 333.

To say as the Tax Court did that the interests were divisible and assignable is not only an application of an erroneous legal standard; it is an application of no *standard* at all, since it applies to any number of types of interest and is no legal criterion of the character of the interests of corporate shareholders.

(e) PERSONAL LIABILITY OF PARTICIPANTS.

Of all the legal characteristics and advantages of the corporate firm of business organization, none is more vital than the limitation of personal liability of the participants to the property embarked in the undertaking.¹

In the instant case the Tax Court made no finding regarding this essential matter. It can only be assumed, therefore, that the Tax Court knew that, during the period in question, the parties had *not* so limited their liabilities in connection with the business, and avoided the issue.

In *Planters' Operating Co. v. Commissioner*² the Court held that the Board cannot ignore undisputed evidence in reaching its conclusions. It is equally true that the Board cannot ignore stipulated evidence which conclusively establishes, as a matter of law, a factor vital to the determination of the case.

Petitioners during the period in question authorized Helm to enter into certain leasing and selling agreements

¹Cf. *Morrissey v. Commissioner*, *supra*, page 359; *Commissioner v. Gerstle*, *supra*, page 589; *Thrash Lease Trust v. Commissioner*, *supra*, page 928.

²55 F. (2d) 583, 585.

on their behalf and respecting property which they owned. [R. 181, first full paragraph.] Since there was no entity standing between them and the parties with whom Helm dealt, which would legally limit their liability, they would have been liable in their own persons and estates for any obligations incurred by Helm in the exercise of that authority. It makes no difference whether Helm acted as their common agent or as the managing partner of a joint adventure, their liability was inescapable.

As a matter of law, therefore, the participants of the organization did not enjoy the primary benefit which corporate organization affords. Having failed to apply a correct legal test to the facts of this case, the Tax Court's decision is erroneous and should be reversed on this ground alone.

Considering all the characteristics of the organization during the period (in which the income in question was realized) it is perfectly apparent that the rights, powers, privileges and obligations of the petitioners are, as a matter of law, indicative of and comparable to a mere co-tenancy with each co-tenant dealing with his interest in the property through a revocable agency. At most, the petitioners constituted a joint adventure. Such elements are the antithesis of the corporate forms and methods required to establish "association" status under Section 901 of the law.

II.

During the Period in Which the Declaration of Trust Was in Effect Petitioners' Organization Lacked the Essential Characteristics of a Corporation or Association Within the Purview of Section 901 of the Revenue Act of 1938.

In reaching a decision the Tax Court admitted that this was "a border line case." [R. 19.] That being so, the Court was under a solemn duty to consider carefully *all* the characteristics of petitioners' organization, for the lack of any essential corporate element would be sufficient to take this organization out of the association classification. This the Tax Court failed to do.

The Tax Court emphasized the fact that the group was "collectively engaged in business." This is not a controlling legal standard, for many types of groups may participate in business enterprises and still not be classified as associations.

In *Commissioner v. Gibbs-Preyer Trusts Nos. 1 & 2*, *supra*, at page 623, the Sixth Circuit Court analyzed the problem thus:

"It is not always controlling that one or more persons associate themselves together for the purpose of engaging in business for profit. If Congress had desired or intended to tax every association as a corporation it could have done so easily in simple and unmistakable language and if it had intended such an application of the statutes here in question, it would have so provided. It is persuasive that Congress intended to tax as a corporation *only* associations conducting their business for profit after the method and form of a corporation *with its economic advantages*. The Congress has, in repeated enactments, extended

over many years, provided for the taxation of trusts, partnerships and associations as separate taxable entities.” (Emphasis ours.)

It is petitioners’ position that their organization cannot, as a matter of law, be said to have had the same characteristics during the period when the income in question was realized (when no trust declaration was in effect) that it had during the period when the trust declaration specified the rights, powers, privileges and obligations of the co-owners. The Tax Court erred in failing to distinguish between these periods.

Nevertheless, assuming that by virtue of some fiction it is argued that the characteristics of the organization were at all times governed by the trust agreement, it is apparent that the essential elements of the corporate form of organization were lacking during the taxable year.

(a) CONTINUITY OF THE ORGANIZATION.

The holder of stock has no *power* upon obtaining ownership thereof to demand a distribution of his proportionate share of the corporate assets. In the instant case, each of petitioners had the right to revoke the trust declaration as to his interest and to compel a reconveyance to him of his interest in the land.

It is the law of California¹ that:

“Unless expressly made irrevocable by the instrument creating the trust, every voluntary trust shall be revocable by the trustor by writing filed with the trustee. When a voluntary trust is revoked by the trustor, the trustee shall transfer to the trustor its full title to the trust estate.” (Emphasis ours.)

¹California Civil Code, Section 2280.

Provisions specifying the duration of a California trust do not constitute an “express” provision that the trust shall be irrevocable.

In *Fernald v. Lawsten*¹ the trustor transferred her properties and a cosmetics business to Lawsten, as trustee, to pay the income to her for her life, with the remainder over to Lawsten at her death. The trust agreement also provided (as in the instant case) that the trust was to be revocable by an agreement of the parties in writing. The Court held:

“* * * The trust agreement contains no express provision that it is to become irrevocable. It is expressly provided that the trust shall become revocable when ‘agreed upon in writing by the parties thereto.’² This does not affirmatively declare the trust may not be otherwise terminated. Since the document is not expressly made irrevocable, it may be revoked in the manner provided by Section 2280 of the Civil Code.”

In the instant case, if the petitioners had not intended to reserve the right of revocation to themselves, they would have made an express provision that the trust declaration was to be irrevocable.

No such power to withdraw his share of the assets of the business exists in favor of the holder of corporate shares. It does exist, of course, in the case of co-tenants, partners or joint adventurers.

¹26 Cal. App. (2d) 552, 79 Pac. (2d) 742, 746.

²Compare the similar provision in the trust agreements here involved. [R. 62 and 191.]

(b) PERSONAL LIABILITY OF PARTICIPANTS.

Of all the “economic advantages” which are provided by the corporate form of business enterprise, none is more sought after by the participants than the advantage of limitation of personal liability to the property embarked in the enterprise. The corporate form almost invariably provides it; the trust form usually provides it. But what of the case at bar?

In both declarations of trust the parties expressly agreed to pay *any amount* of principal and interest which might become due upon the purchase contracts and also upon any encumbrances thereafter placed upon said property including taxes and assessments. [R. 58-59 and 187.]

Had Helm in the course of his activities incurred any liabilities or obligations, a judgment thereon would have become a lien, *i. e.*, an encumbrance upon the property. So, also, would tax, assessment, agrarian and mechanics' liens have become encumbrances if liability therefor had been incurred by Helm.

The stockholders of a corporation have the right and privilege of compelling the creditor to look solely to the corporate assets for his due. In the instant case, by their agreement, petitioners deprived themselves of this immunity by agreeing to be personally responsible for such obligations.

Such a legal characteristic is not the mark of the corporate shareholder. It is the mark of the partner or the principal dealing through an agent.

The Tax Court failed even to consider this salient feature of petitioners' organization. In so doing, it erred, prejudicially.

(c) TRANSFERABILITY OF INTERESTS.

The Tax Court's finding that "participating interests are divisible and assignable" [R. 20], is, we submit, an insufficient legal standard of any form of business organization.

In alluding to the divisibility and assignability which is characteristic of corporate stock, the courts have used such connotative phrases as "transferable certificates of interest,"¹ and "ready divisibility and transferability of beneficial interests."² In other words, the evidence of ownership of corporate stock may be assigned at the will of the holder to another party, who takes it and the interest it represents without incurring any obligation except his obligation to pay the assignor. Neither the corporation nor the other shareholders have any power to prevent the assignment or to attach any conditions thereto. Assignment of stock, in substance, transfers no direct interest in the assets of the corporation but merely a claim against the corporate entity for a share of profits (but not losses) and a right to participate in any liquidation.

The interests of the petitioners bear no similarity to corporate stock, save the feature of assignability which is characteristic of *all* interests in property.

"There were no shares, certificates, or other evidence of interest beyond each member's copy of the agreement."³

Moreover, by express restriction in the agreement, no participant could make a valid assignment of his interest

¹*Lewis & Co. v. Commissioner, supra*, page 389.

²*Commissioner v. Gerstle, supra*, page 589.

³These words, taken from *Commissioner v. Gerstle, supra*, page 589, fit the instant case exactly.

unless the assignee agreed to assume all obligations of the assignor respecting the interest assigned. [R. 60 and 189.] It is not a characteristic of corporate stock that the assignee thereof should assume an obligation to pay a share of any liabilities which might be or become encumbrances upon the corporate assets.

(d) NATURE OF PETITIONERS' ORGANIZATION.

Notwithstanding it conceded this to be a "border line case," the Tax Court, as noted above, failed to consider several of the essential elements which, as a matter of law, are necessary to a finding that an organization is an association under Section 901 of the 1938 Revenue Act.

Without showing any sound legal basis therefor, the Tax Court concluded that petitioners' group was more like the taxpayer in *Thrash Lease Trust v. Commissioner*, *supra*, than in *Commissioner v. Gerstle*, or *Commissioner v. Rector & Davidson*, *supra*.

Petitioners hesitate to weary the Court by an extended comparison of these cases but the controlling distinctions involved make that procedure necessary.

1. *Purpose of the Enterprises.*

In the *Gerstle* case and in the instant case, a group of individuals purchased undeveloped real property for the purpose of *selling and leasing* the same for a profit. In the *Rector & Davidson* and *Thrash Lease Trust* cases, groups of individuals acquired undeveloped land for the purpose of carrying on oil drilling operations.

2. *Participating Interests.*

In the *Gerstle, Rector & Davidson* and instant cases, the participants purchased interests in the real property involved, title to which was lodged in trustees for the purpose of facilitating the management of the property. The nature of the ownership was described by this Honorable Court in the *Gerstle* case thus:¹

“It seems clear that the members were equitable owners of the real property acquired, and that *their beneficial interests were not merely personal claims against the syndicate managers.*” (Emphasis ours.)

In the *Gerstle, Rector & Davidson* and instant cases, the interest holders owned fractions of the real property and appointed certain ones of their groups, agents or attorneys-in-fact to execute leases, collect proceeds thereof, pay expenses and remit the net proceeds.

In the *Thrash Lease Trust* case, however, participating shares were created and assigned to outsiders whose only interest, in many instances, was a personal claim against the trustee for a share of the profits. Their interests were readily and conveniently assignable in the manner of corporate stock.

In the instant case not only were petitioners' copies of the agreement the sole evidence of their interests, but any assignment required an assumption of personal liability by the assignee which is never found in assignments of corporate stock. (See *ante*, pp. 28-29.)

¹At page 590.

3. *Centralized Management.*

In all four cases there was centralized management in the sense that the participants acted through representatives. In all but the *Thrash Lease Trust* case, however, the participants owned direct interests in the land involved and the managers acted as agents of the owner-participants and not as agents of an intervening entity. While there were trustees holding title, their function was essentially ministerial and the actual conduct of the business was performed by the managers.¹

It was this feature among others that no doubt moved this Honorable Court in the *Thrash Lease Trust* case to remark that "This is a border line case."²

4. *Personal Liability of Participants.*

This essential element alone is sufficient to place petitioners well outside the borderline of an association. In the *Thrash Lease Trust* case the Ninth Circuit Court³ found that the liability of the participants for obligations of the enterprise was limited.

In the *Gerstle* and *Rector & Davidson* cases the Courts both found that the liability of the participants was not thus limited.

In the instant case the Tax Court avoided the issue, but the record is clear that even during the period of the trust agreements, the participants had assumed and agreed to pay the amount of any liabilities which might become an encumbrance on the property.

¹In the instant case see the Declaration of Trust. [R. 60 and 189.]

²Opinion, page 928.

³Opinion, page 928.

The obvious distinctions between the *Thrash Lease Trust* case and the *Gerstle, Rector & Davidson* and instant cases make it perfectly clear that the Tax Court erred in holding that petitioners were more like the taxpayer in the *Thrash Lease Trust* case than the joint adventures involved in the *Gerstle* and *Rector & Davidson* cases.

Conclusion.

1. The Tax Court erred in failing to consider all the elements and characteristics which, as a matter of law, constitute the legal tests to be applied in determining the status of any group as an "association" under Section 901 of the 1938 Revenue Act.

2. During the period in which no trust agreement was in effect, petitioner-group lacked any of the characteristics which, as a matter of law, are necessary to establish that petitioners constituted an "association" under Section 901 of the 1938 Revenue Act.

3. During the period in which the rights, powers, privileges and obligations of the petitioners were specified by the trust declarations their organization lacked the essential elements which are necessary, as a matter of law, to establish that petitioners constituted an "association" under Section 901 of the 1938 Revenue Act.

Respectfully submitted,

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No. 10352

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

HELM AND SMITH SYNDICATE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

**ON PETITION FOR REVIEW OF THE DECISION OF THE UNITED
STATES BOARD OF TAX APPEALS**

BRIEF FOR THE RESPONDENT

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In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10352

HELM AND SMITH SYNDICATE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

*ON PETITION FOR REVIEW OF THE DECISION OF THE UNITED
STATES BOARD OF TAX APPEALS*

BRIEF FOR THE RESPONDENT

OPINION BELOW

The only previous opinion in this case is the memorandum opinion of the United States Board of Tax Appeals (R. 18-21), which is not reported.

JURISDICTION

The petition for review involves federal income and excess profits taxes for the calendar year 1938 in the amounts of \$5,223.57 and \$30.73, respectively. (R. 226-240.) The return in respect of which the question of tax liability arises was filed with the Collector of Internal Revenue at Los Angeles, California. (R. 196.) On February 6, 1941, the Commissioner mailed to taxpayer a notice of deficiency in the total amount

No assignment of any beneficial interest was to be valid unless the trustee should receive a duly executed original of such assignment accepted by the assignee and disclosing on his part an assumption of the obligations of the beneficiary whose interest was assigned. (R. 60.) The trustee was to continue in office until his death, resignation or removal by a final order of the court, and in case of a vacancy in the trusteeship a successor was to be elected by a majority vote of the beneficiaries of the trust. (R. 19, 61.)

The trust was to continue for a period of 25 years unless sooner terminated by an agreement of two-thirds of the beneficiaries. (R. 62.)

In 1938 Helm executed agricultural leases on part of the property, and in May of that year he negotiated oil leases with five oil companies. Terms were tentatively agreed upon and the agreements, executed by Helm as an individual, were deposited in escrow. Upon discovering that Helm held title as trustee to the property under the trust declaration, the escrow company refused to consummate the transaction until the matter of the trust was cleared up. Rather than have the leasing agreements reexecuted by Helm as trustee, the beneficiaries agreed that for the purpose of consummating the leasing agreements the trust declaration should be revoked so as to avoid Helm's having to perform the usual formalities required of a trustee. The trust declaration was therefore revoked on May 24, 1938. (R. 19, 26-27, 219.) The leases with the oil companies were then finally executed and the leasing bonuses paid. Certain of the property was sold in July, 1938. (R. 19.)

In July, 1938, a second trust instrument was executed by the parties substantially restating the terms of the earlier instrument which had been revoked. This second trust instrument specifically declared that the original declaration of trust had been revoked by the beneficiaries in full reliance upon the integrity of L. G. Helm simply for the purpose of enabling him to execute the oil leases without the necessity of complicated proceedings, which would have been required had the trust remained in existence. (R. 181.)

One of the participants sold one-fourth of his interest to each of two new persons and their proportionate interests were then recognized. In the taxable year Helm distributed the net gain and income among the participants proportionately. No explorations had been made or wells drilled upon the property. (R. 19.) The Commissioner determined that taxpayer was an association within the meaning of Section 901 (a) of the Revenue Act of 1938 and was therefore taxable as a corporation. This determination was upheld by the Board of Tax Appeals.

SUMMARY OF ARGUMENT

The trust in this case is an association to be taxed as a corporation because it was created and maintained by associates as a medium for the conduct of a joint business enterprise and the sharing of profits therefrom. Here the associates agreed among themselves to purchase certain property, believing that it had possibilities for producing oil. Under the declaration of trust entered into between the parties, the named trustee was to manage and control the

property, and given authority to sell, encumber or lease it, including the power to execute oil and gas leases. Crop sharing and oil and gas leases were executed by him and certain of the property sold—the proceeds being distributed among the participants.

Furthermore, the trust set up to conduct business for the benefit of the beneficiaries had those features making it sufficiently analogous to a corporation and distinguishable from a partnership to justify taxing it as a corporation. The term “association” as used in the Act merely implies resemblance to, and not identity with, a corporation. That resemblance was sufficiently present in the instant case in that there was provision for holding title to the trust property continuously, centralized management, continuity of the enterprise in spite of the death of the owners of the beneficial interests, transferability of beneficial interests without affecting the continuity of the enterprise, and limitation of personal liability of the participants to the property embarked in the undertaking.

ARGUMENT

Taxpayer is an “association” within the meaning of Section 901 (a) of the Revenue Act of 1938 and is, therefore, taxable as a corporation

Section 901 (a) of the Revenue Act of 1938 (Appendix, *infra*) provides that the term “corporation” as used in the Act includes “associations,” while the term “partnership” includes a syndicate, pool, joint venture, or other incorporated organization, by means of which business is carried on, and which is not, within the meaning of the Act, a trust, estate or a

corporation. In examining the Congressional intent as to the meaning of the word "association" as used in the Act, the Supreme Court in *Morrissey v. Commissioner*, 296 U. S. 344, said (pp. 356-357):

"Association" implies associates. It implies the entering into a joint enterprise, and, as the applicable regulation imports, an enterprise for the transaction of business. This is not the characteristic of an ordinary trust—whether created by will, deed, or declaration—by which particular property is conveyed to a trustee or is to be held by the settlor, on specified trusts, for the benefit of named or described persons. Such beneficiaries do not ordinarily, and as mere *cestuis que trustent*, plan a common effort or enter into a combination for the conduct of a business enterprise. Undoubtedly the terms of an association may make the taking or acquiring of shares or interests sufficient to constitute participation, and may leave the management, or even control of the enterprise, to designated persons. But the nature and purpose of the cooperative undertaking will differentiate it from an ordinary trust. In what are called "business trusts" the object is not to hold and conserve particular property, with incidental powers, as in the traditional type of trusts, but to provide a medium for the conduct of a business and sharing its gains. Thus a trust may be created as a convenient method by which persons become associated for dealings in real estate, the development of tracts of land, the construction of improvements, and the purchase, management and sale of proper-

ties; or for dealings in securities or other personal property; or for the production, or manufacture, and sale of commodities; or for commerce, or other sorts of business; where those who become beneficially interested, either by joining in the plan at the outset, or by later participation according to the terms of the arrangement, seek to share the advantages of a union of their interests in the common enterprise.

Since the *Morrissey* decision it is clear that whether a particular form of business enterprise is to be classed and taxed as an "association" does not depend upon its having a statutory organization or privilege or upon its use of corporate forms or procedure. As was said in *Fidelity-Bankers Trust Co. v. Helvering*, 113 F. 2d 14, 17 (App. D. C.):

Taxability as an association or corporation no longer turns on technical differences in organizational structure nor on the degree of control given to beneficiaries in management of trust affairs. Simulation by unincorporated organizations of corporate forms and approximation of corporate advantages by skillful use of trust and contract devices have brought legislative classification with technical corporations for taxation and other purposes, * * *.

Hence, while the income of the taxpayer here is subject to the corporate tax if its business was conducted in a manner resembling that of a corporation, it is not necessary that there be complete identity of the taxpayer organization with that of a corporation. See *Commissioner v. Vandegrift R. & Inv. Co.*, 82 F. 2d

387, 390 (C. C. A. 9th). As the Supreme Court in the *Morrissey* case declared (pp. 357-358):

4. The inclusion of associations with corporations implies resemblance; but it is resemblance and not identity. The resemblance points to features distinguishing associations from partnerships as well as from ordinary trusts. As we have seen, the classification cannot be said to require organization under a statute, or with statutory privileges. The term embraces associations as they may exist at common law. * * * While the use of corporate forms may furnish persuasive evidence of the existence of an association, the absence of particular forms, or of the usual terminology of corporations, cannot be regarded as decisive.

The Court then proceeded to point out (p. 354) the salient features of a trust—when created and maintained as a medium for the carrying on of a business enterprise and sharing its gains—which may be regarded as making it analogous to a corporate organization. These features are five in number and may be summarized as follows: (1) The holding of title to the trust property by the trustees, as a continuing body with provision for succession; (2) centralized management by the trustees; (3) continuity of the enterprise carried on by means of the trust in spite of the death of owners of beneficial interests; (4) transferability of beneficial interests without affecting continuity of the enterprise and permitting the introduction of large numbers of participants; and (5) limitation of personal liability of participants to the property embarked in the undertaking.

The Court then held that the trust there in question, created for the development of a tract of land, constituted an association. See also *Swanson v. Commissioner*, 296 U. S. 362; *Helvering v. Combs*, 296 U. S. 365; *Helvering v. Coleman-Gilbert*, 296 U. S. 369.

There can be no question that the trust involved in the instant case comes within the general definition of an association as laid down in the *Morrissey* case. The requirements of that definition, namely, that there be associates and that they enter into a joint enterprise for the transaction of business and sharing of its gains, are fully met. Here a group of individuals agreed among themselves to purchase a certain tract of land, believing that it had possibilities for producing oil. Subsequently, a declaration of trust was prepared and entered into by all the contributors. Under that trust instrument one L. G. Helm was named trustee to hold legal title for the benefit of the named beneficiaries who had contributed to the purchase price. The trustee was to manage and control the property, and was empowered to sell, convey, encumber or lease it, including the execution of oil and gas leases, and all income and profit from the property were to be distributed to the named beneficiaries. (R. 58-59.) Various crop-sharing and oil leases were executed and certain of the property was sold and the income distributed among the beneficiaries proportionately. Clearly then, this is a case of associates entering into a joint enterprise for the transaction of business and the sharing of its gains, with the associates seeking "to share the advantages of a union of their interests in the common enterprise."

Morrissey v. Commissioner, *supra*, p. 357. See also *Kettleman Hills R. S. No. 1 v. Commissioner*, 116 F. 2d 382 (C. C. A. 9th), certiorari denied, 313 U. S. 582; *United States v. Trust No. B. I. 35, Etc.*, 107 F. 2d 22 (C. C. A. 9th); *Title Insurance & Trust Co. v. Commissioner*, 110 F. 2d 482 (C. C. A. 9th); *Thrash Lease Trust v. Commissioner*, 99 F. 2d 925 (C. C. A. 9th), certiorari denied, 306 U. S. 654; *Monrovia Oil Co. v. Commissioner*, 83 F. 2d 417 (C. C. A. 9th); *Commissioner v. Vandegrift R. & Inv. Co.*, *supra*; *Nashville Trust Co. v. Cotros*, 120 F. 2d 157, 122 F. 2d 326 (C. C. A. 6th), certiorari denied, 314 U. S. 680; *Sibley Syndicate v. Commissioner*, 131 F. 2d 224 (C. C. A. 6th), certiorari applied for March 12, 1943.

The trust in the instant case, which thus satisfies the primary conception of an association, has in addition, we submit, those features which point to resemblance to a corporation as distinguished from a partnership. The first feature—the holding of title to the trust property by the trustee, as a continuing body with provision for succession—is expressly provided for by the appointment of a trustee to hold title to the property (R. 58) and by providing that such trustee shall continue in his office until death or resignation, and in case of vacancy in the trusteeship, a new trustee shall be appointed by the beneficiaries of the trust (R. 61). The second feature—centralized management—is also expressly provided for by the appointment of a trustee and the powers given him to manage and control the trust property. (R. 58.)

The third feature—continuity of the enterprise in spite of the death of the owners of the beneficial interests—was secured by virtue of the use of the trust form. It seems clear that the beneficiaries here had no interest in the trust property itself, but only rights to the performance of the trust, to the distribution of the profits, and to the distribution of the property remaining at the termination of the trust. (R. 57-59, 63.)

The assertion of taxpayer to the effect that the trustee was merely an agent of the beneficiaries and that his death would have interrupted the continuity of the enterprise (Br. 19-20) finds, we submit, no support in the facts. The trustee here was expressly designated as a trustee; he was never referred to as an agent. Title to the property was vested in the trustee for the benefit of the participants and he was given the power to manage and control the trust property. In *Taylor v. Davis*, 110 U. S. 330, the Supreme Court said (pp. 334-335):

A trustee is not an agent. An agent represents and acts for his principal, who may be either a natural or artificial person. A trustee may be defined generally as a person in whom some estate, interest, or power in or affecting property is vested for the benefit of another.

See also *Sibley Syndicate v. Commissioner*, *supra*; *Commissioner v. Fortney Oil Co., Etc.*, 125 F. 2d 995 (C. C. A. 6th); *Nashville Trust Co. v. Cotros*, *supra*. Since L. G. Helm was clearly a trustee, and not an agent, taxpayer's reference (Br. 19) to the provisions of the California Civil Code, dealing with the termina-

tion of an agency, can obviously have no pertinency here.

Nor is taxpayer's position aided by his contention that the death of any of the participants would have interrupted the continuity of the enterprise. While such a result might follow under the state law *if* the organization were in reality a partnership,¹ the fact that such enterprise is carried on by means of a trust secures it from interruption by the death of owners of beneficial interests, and it is in this respect that such interests are distinguished from those of partners and are akin to the interests of members of a corporation. *Morrissey v. Commissioner, supra*, p. 358. In fact, in California itself, it has been recognized that wherever several persons transfer legal title in property to trustees with complete power of management, the trustees to pay over the profits of the enterprise to the creators, a business trust is formed which, unlike a partnership, does not dissolve upon the transfer of any interest or upon the death of any participant. *Goldwater v. Oltman*, 210 Cal. 408, 292 Pac. 624.²

¹ Even if the enterprise engaged in here were held under the state law to create the relationship of principal and agent, such holding would not control the status of the enterprise for purposes of determining its taxability as an association under the federal statute. *Commissioner v. Fortney Oil Co., Etc., supra*, p. 997.

² Section 2280 of the California Civil Code relied upon by taxpayer (Br. 25) and which provides that voluntary trusts are revocable unless expressly made irrevocable does not militate against the conclusion that taxpayer is taxable as an association. Apart from the fact that it is doubtful whether that section has any application to other than a pure trust, and not to a business trust as is involved in the instant case, taxpayer's argument would

The fourth feature indicating resemblance to a corporation—transferability of beneficial interests without effecting continuity of the enterprise—is also present in the instant case, despite taxpayer's claim to the contrary. That the assignability of the beneficial interests or any part thereof was contemplated is made clear by that provision of the trust instrument expressly requiring that the trustee be notified of any such assignment and that the assignee assume the obligation of the participants as to the interest so assigned. (R. 60.)³ Nor does taxpayer seriously dispute this proposition. Taxpayer relies, however, upon the fact that the interests of the participants were not evidenced by any tangible certificates, or other indicia of ownership. While it is true that in the *Morrissey* case there was a provision in the trust for the issue of transferable certificates, that fact was considered as simply carrying "the analogy to corporate organization * * * still further." (P. 360.) As the Supreme Court there declared (p. 358):

mean that no business trust created in California could be taxed as an association unless expressly made irrevocable. Such result was obviously never intended by the federal taxing statute. See *Morrissey v. Commissioner*, *supra*; *Kettleman Hills R. S. No. 1 v. Commissioner*, *supra*; *United States v. Trust No. B. I. 35, Etc.*, *supra*; *Title Insurance & Trust Co. v. Commissioner*, *supra*; *Monrovia Oil Co. v. Commissioner*, *supra*; *Commissioner v. Vandegrift R. & Inv. Co.*, *supra*.

³ Even the lack of a specific provision permitting the transfer of beneficial interests has been held not to compel the conclusion that a transfer of beneficial interests could not be made without affecting continuity of the enterprise. *Nashville Trust Co. v. Cotros*, *supra*; *Del Mar Addition v. Commissioner*, *supra*; *Sibley Syndicate v. Commissioner*, *supra*.

Again, while the faculty of transferring the interests of members without affecting the continuity of the enterprise may be deemed to be characteristic, the test of an association is not to be found in the mere formal evidence of interests or in a particular method of transfer.

Thus it has been expressly held that the issuance of certificates of beneficial interests or other indicia of ownership is not an essential requirement for taxability of a business enterprise as an association. *Monrovia Oil Co. v. Commissioner*; *Nashville Trust Co. v. Cotros*, *supra*; *Del Mar Addition v. Commissioner*, 113 F. 2d 410 (C. C. A. 5th); *Commissioner v. Fortney Oil Co., Etc.*, *supra*; *Sibley Syndicate v. Commissioner*; *Commissioner v. Nebo Oil Co., Trust*, 126 F. 2d 148 (C. C. A. 10th), certiorari denied October 12, 1942. See also *Helvering v. Coleman-Gilbert*, *supra*.

The fifth and last feature pointing to resemblance to a corporation—limitation of personal liability of the participants to the property embarked in the undertaking—taxpayer insists is not present in the instant case. It is taxpayer's contention that the participants agreed to be personally liable for all the obligations incurred by the trustee in the performance of his duties. In support of this contention taxpayer relies upon the provision of the trust instrument which provided that each of the participants should contribute his proportion of the funds necessary to pay any encumbrances placed upon the property, including taxes and assessments. (R. 58-59.) But, we submit, that provision is a far cry from an assumption of unlimited

personal liability by the beneficiaries. The purpose of that provision obviously was to protect the trust property by requiring the participants, if necessary, to contribute a pro rata share sufficient to relieve it of any encumbrances, such as taxes or assessments. It may be true that if the participants failed to contribute enough to discharge any encumbrance on the trust property, the property might be lost. But this is not to say that the beneficiaries were personally liable to creditors for the payment of all debts and obligations incurred by the trustee in the performance of his duties. On the contrary, the provision seems to recognize that the personal liability of the participants was limited to the trust property.⁴ Furthermore, even if the provision relied upon is interpreted as imposing personal liability on the participants, such liability, rather than being unlimited, was expressly limited to each participant's proportionate share of any encumbrance. In any event, the courts have recognized that a provision limiting the liability of beneficiaries is not a *sine qua non* of taxability of a business enterprise as an association. At the most, as this Court and others have pointed out, the purpose to limit the liabilities of the participants indicates merely a "further resemblance to a corporation." *Thrash Lease Trust v. Commissioner, supra*, p. 928.

⁴ The trust agreement provided that if any beneficiary failed to pay his proportionate share of sums expended by the trustee upon any encumbrances placed on the property, the trustee was to advance the necessary sum and if not repaid by the defaulting beneficiary, such beneficiary's interest was to be sold. The beneficiary was to receive any excess of the selling price over the amount owed by him. (R. 59-60.)

See also *Del Mar Addition v. Commissioner, supra*, p. 411; *Nashville Trust Co. v. Cotros, supra*, p. 159; *Kilgallon v. Commissioner*, 96 F. 2d 337, 338 (C. C. A. 7th), certiorari denied, 305 U. S. 622; *Bert v. Helvering*, 92 F. 2d 491 (App. D. C.).⁵ As the Court of Appeals said in the last mentioned case (p. 495):

While, therefore, it is true that the Supreme Court in all four cases in 296 U. S. mentions limitation of liability as one of the characteristics of the trusts declared in those cases to be associations under the law, and while in this case the right of the beneficiaries or the trustee to limitation of liability may perhaps be challenged, as to which we need express no opinion, we think this is not the vital and conclusive factor under the terms of the tax act, or that the Supreme Court intended in its four opinions to make it an indispensable element in cases of this sort. * * * We think, as was said in *Commissioner v. Brouillard* (C. C. A.) 70 F. (2d) 154, that where an entity of this kind resembles a corporation in some respects and a partnership in others, the features of similarity should be compared and the marks of dissimilarity contracted. The resemblances should be balanced. It should be determined by that test the one to which the enterprise is predominantly akin in the method, mode, and form of procedure in the conduct of its business. This is what we think the Supreme Court meant when it said in the *Morrissey* case, "The inclusion of

⁵ In *Helvering v. Combs, supra*, an examination of the record fails to disclose any express limitation of liability of the beneficiary, although the court speaks of it in its opinion.

associations with corporations implies resemblance; but it is resemblance and not identity."

The Government's contention that taxpayer here is taxable as an association finds further support in the applicable Treasury Regulations. The Supreme Court in the *Morrissey* case declared (pp. 354-355):

As the statute merely provided that the term "corporation" should include "associations," without further definition, the Treasury Department was authorized to supply rules for the enforcement of the Act within the permissible bounds of administrative construction.

An examination of Treasury Regulations 101, Articles 901-1 and 901-4 (Appendix, *infra*), dealing with the meaning of the term "association" generally and as distinguished from a trust, and with the term "partnership," makes it readily apparent that the trust in the case at bar comes clearly within the definition of "association."

Thus Article 901-2 (Appendix, *infra*) provides, with regard to associations, that the term "association" is not used in the Act in any narrow technical sense, but includes any organization, created for the transaction of designated affairs, or the attainment of some object, which, like a corporation, continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group acting in a representative capacity.

Article 901-3 (Appendix, *infra*) distinguishes from an ordinary trust, an arrangement, as in the instant case, whereby legal title to property is conveyed to a

trustee who, under a declaration of trust, holds and manages the property with a view to income or profit for the benefit of the beneficiaries. Such an arrangement is designed to afford a medium whereby profit-seeking activity may be carried on through a substitute for an organization such as a voluntary association or joint stock company or a corporation, with the beneficiaries supplying the capital and the trustee acting as manager of the undertaking. The article points out that by means of such a trust the disadvantages of an ordinary partnership are avoided, and many of the advantages characteristic of a corporation obtained, and that the Act therefore treats such a trust according to its essential nature, namely, as an association.

And with regard to partnerships, Article 901-4 states that the Act provides its own concept of a partnership including therein not only a partnership as known at common law, but, as well, a syndicate, group, pool, joint venture, or other unincorporated organization which carries on any business, financial operation, or venture, and which is not, within the meaning of the Act, a trust, estate, or a corporation. The article further provides that, on the other hand, the Act classifies under the term "corporation" an association or joint stock company, the members of which may be subject to the personal liability of partners, and that, if an organization is not interrupted by the death of a member or by a change in ownership of a participating interest during the agreed period of existence, and its management is centralized in one or more persons in their representative capacities,

such an organization is an association, taxable as a corporation.

The cases cited and relied upon by taxpayer here do not, we submit, support its contention that it is not taxable as an association. Each case must, of course, necessarily depend upon its own facts. As the Supreme Court in the *Morrissey* case (p. 356) pointed out, it was impossible in the nature of things to translate the statutory concept of "association" into a particularity of detail that would fix the status of every sort of enterprise or organization which ingenuity may create. Thus *Commissioner v. Gerstle*, 95 F. 2d 587 (C. C. A. 9th), and *Commisioner v. Rector & Davidson*, 111 F. 2d 332 (C. C. A. 5th), certiorari denied, 311 U. S. 672, upon which taxpayer relies, are readily distinguishable. At the outset it should be observed that in each of those cases the appellate court refused to reverse the holding of the Board of Tax Appeals that the enterprises in question were not taxable as associations. The refusal in each instance seems to be based upon the ground that while the arrangements had some of the attributes of a corporation, the Board's finding that they more nearly resembled joint ventures was reasonable in light of the evidence. As the court said in the *Rector & Davidson* case (p. 333):

* * * the finding of the Board of Tax Appeals that respondent was a syndicate or joint venture which resembled a partnership more nearly than it did a corporation was a fair and reasonable conclusion, supported by the evidence, and its decision should be affirmed.

In the *Gerstle* case it was felt that the members of the syndicates were equitable owners of the real property and that their beneficial interests were not mere personal claims against the syndicate managers. In the case at bar it seems clear that the beneficial interests were not interests in the property but rights to the performance of the trust and distribution of the net profits and of the property remaining at the termination of the trust. Also in the *Gerstle* case the syndicate agreements expressly provided that the syndicate managers were to act as agents as well as trustees for the members. No comparable provision appears in the instant case. Furthermore, in the *Gerstle* case no assignment by any member was to release him from his liability unless the syndicate managers so agreed. And finally, the liability of the participants in that case was not limited. As previously pointed out, such does not appear to have been the situation here.

The *Rector-Davidson* case is likewise distinguishable in that there no trust was ever created. The managers of the property were expressly designated as the agents and attorneys in fact of the participants. Title to the property was held in undivided interests by all of the participants, as tenants in common. The instant case is obviously dissimilar. More nearly like the instant case are, we submit, *Thrash Lease Trust v. Commissioner, supra*; *Del Mar Addition v. Commissioner, supra*; *Nashville Trust Co. v. Cotros, supra*; *Sibley Syndicate v. Commissioner, supra*; *Commissioner v. Fortney Oil Co., Etc., supra*. See also *Commissioner*

v. *Vandegrift R. & Inv. Co., supra*; *Monrovia Oil Co. v. Commissioner, supra*.⁶

It seems necessary to deal briefly with taxpayer's argument that the trust agreement entered into by the various participants should be ignored in determining whether the enterprise is taxable as an association. It should be noted that in May of 1938, L. G. Helm negotiated oil leases with five oil companies. Terms were tentatively agreed upon and the agreements executed by Helm as an individual were deposited in escrow. When the escrow company found that Helm held title under the original trust declaration entered into on June 29, 1937, it refused to consummate the transaction until the trust matter was cleared up. So rather than have the leasing agreements re-executed by Helm as trustee, the beneficiaries agreed that for the purpose of consummating the leasing agreements, the trust declaration should be revoked so as to avoid Helm's having to perform the usual formalities required of a trustee. Such revocation was made on May 24, 1938. (R. 26-27, 219.) The leases with the oil companies were then finally executed and the leasing bonuses paid. Thereafter on July 15, 1938, a second trust declaration, virtually identical with the original trust instrument, was executed. It is the taxpayer's contention that because

⁶ *Commissioner v. Gibbs-Preyer Trusts Nos. 1 & 2*, 117 F. 2d 619 (C. C. A. 6th), cited by taxpayer, also involved the affirmance of the Board's decision by the reviewing court. That case turned on the fact (p. 623) that the trusts in question were not created and maintained as mediums for the carrying on of business enterprises and sharing in their gains. Obviously no such contention can be made in the instant case.

the leasing bonuses were received in the interim while no formal trust declaration was in effect, the question of whether taxpayer is taxable as an association must be decided without any consideration of the trust agreements. Apart from the fact that substantial portions of the income in question were received by the taxpayer while the trust declarations were in effect,⁷ it seems manifest that taxpayer's contention cannot be sustained. By taxpayer's own admission, the revocation of the original trust instrument was effected simply as a temporary measure designed to avoid the usual formalities required of a trustee. It was clearly contemplated by all the parties that the true relationship between the participants was not to be affected in any way by the revocation of the original trust declaration, and that as soon as the leasing agreements were consummated, the trust agreement would be immediately restored. In fact, the second declaration of trust, executed on July 15, 1938, specifically declares that the original trust instrument was revoked by the beneficiaries in full reliance upon the integrity of L. G. Helm, simply for the purpose of enabling him to execute the oil leases without the necessity of complicated proceed-

⁷ Taxpayer's assertion (Br. 25) that the income in question was realized when no trust declaration was in effect is not in accord with the facts. While certain of the property was sold for a price of \$10,806.25 on June 29, 1938, during the interim when there was no formal trust declaration, other property was sold for \$7,800 on July 25, 1938, *after* the second trust declaration had been executed. (R. 204.) Furthermore, receipts totaling some \$3,851.08 were obtained from crop-sharing leases *prior* to the revocation of the original trust declaration. (R. 201.)

ings. (R. 181.) To seize upon the technicality of the lack of a formal trust instrument for a short interval as a basis for avoiding taxability as an association is so obviously to subordinate substance to form as to require no further comment. Contrary to the assertion of taxpayer (Br. 25) that only "by virtue of some fiction [may] it [be] * * * argued that the characteristics of the organization were at all times governed by the trust agreement," we think it clear that it is only by virtue of some fiction that it can be argued otherwise.⁸

CONCLUSION

The decision of the Board of Tax Appeals is correct and should be affirmed.

Respectfully submitted,

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Special Assistants to the Attorney General.

APRIL, 1943.

⁸ In any event, it seems manifest that during the interval while no formal trust was in existence, a resulting trust in fact existed. See *Nashville Trust Co. v. Cotros*, *supra*, p. 159. See also *Swanson v. Commissioner*, *supra*; 1 Scott, *Law of Trusts* (1939) c. 2, Sec. 17.4, p. 142; 3 Scott, *Law of Trusts* (1939) c. 12, Sec. 440.1, p. 2242.

APPENDIX

Revenue Act of 1938, c. 289, 52 Stat. 447:

SEC. 52. CORPORATION RETURNS.

Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title and such other information for the purpose of carrying out the provisions of this title as the Commissioner with the approval of the Secretary may by regulations prescribe. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

SEC. 901. DEFINITIONS.

(a) When used in this Act—

* * * * *

(2) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(3) The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within

the meaning of this Act, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

* * * * *

Treasury Regulations 101, promulgated under the Revenue Act of 1938:

ART. 901-1. *Classification of taxables*.—For the purpose of taxation the Act makes its own classification and prescribes its own standards of classification. Local law is of no importance in this connection. Thus a trust may be classed as a trust or as an association (and, therefore, as a corporation), depending upon its nature or its activities. (See article 901-3.) The term "partnership" is not limited to the common law meaning of partnership, but is broader in its scope and includes groups not commonly called partnerships. (See article 901-4.) The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint-stock company, an insurance company, and certain kinds of partnerships. (See articles 901-2 and 901-4.) The definitions, terms, and classifications, as set forth in section 901, shall have the same respective meaning and scope in these regulations.

ART. 901-2. *Association*.—The term "association" is not used in the Act in any narrow or technical sense. It includes any organization, created for the transaction of designated affairs, or the attainment of some object, which, like a corporation, continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declara-

ration of trust, a statute, or otherwise. It includes a voluntary association, a joint-stock association or company, a "business" trust, a "Massachusetts" trust, a "common law" trust, an "investment" trust (whether of the fixed or the management type), an interinsurance exchange operating through an attorney in fact, a partnership association, and any other type of organization (by whatever name known) which it not, within the meaning of the Act, a trust or an estate, or a partnership. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association.

ART. 901-3. *Association distinguished from trust.*—The term "trust," as used in the Act, refers to an ordinary trust, namely, one created by will or by declaration of the trustees or the grantor, the trustees of which take title to the property for the purpose of protecting or conserving it as customarily required under the ordinary rules applied in chancery and probate courts. The beneficiaries of such a trust generally do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. Even though the beneficiaries do create such a trust, it is ordinarily done to conserve the trust property without undertaking any activity not strictly necessary to the attainment of that object.

As distinguished from the ordinary trust described in the preceding paragraph is an arrangement whereby the legal title to the property is conveyed to trustees (or a trustee) who, under a declaration or agreement of trust, hold and manage the property with a view to income or profit for the benefit of beneficiaries. Such an arrangement is designed (whether expressly or otherwise) to afford a medium whereby an income or profit-seeking activity may be carried on through a substitute for an organization such as a voluntary associa-

tion or a joint-stock company or a corporation, thus obtaining the advantages of those forms of organization without their disadvantages. The nature and purpose of a cooperative undertaking will differentiate it from an ordinary trust. The purpose will not be considered narrower than that which is formally set forth in the instrument under which the activities of the trust are conducted.

If a trust is an undertaking or arrangement conducted for income or profit, the capital or property of the trust being supplied by the beneficiaries, and if the trustees or other designated persons are, in effect, the managers of the undertaking or arrangement, whether the beneficiaries do or do not appoint or control them, the beneficiaries are to be treated as voluntarily joining or cooperating with each other in the trust, just as do members of an association, and the undertaking or arrangement is deemed to be an association classified by the Act as a corporation. However, the fact that the capital or property of the trust is not supplied by the beneficiaries is not sufficient reason in itself for classifying the arrangement as an ordinary trust rather than as an association.

By means of such a trust the disadvantages of an ordinary partnership are avoided, and the trust form affords the advantages of unity of management and continuity of existence which are characteristic of both associations and corporations. This trust form also affords the advantages of capacity, as a unit, to acquire, hold, and dispose of property and the ability to sue and be sued by strangers or members, which are characteristic of a corporation; and also frequently affords the limitation of liability and other advantages characteristic of a corporation. These advantages which the trust form provides are frequently referred to as resemblance to the general form, mode of procedure, or effectiveness in action, of an association or a corpora-

tion, or as "quasi-corporate form." The effectiveness in action in the case of a trust or of a corporation does not depend upon technical arrangements or devices such as the appointment or election of a president, secretary, treasurer, or other "officer," the use of a "seal," the issuance of certificates to the beneficiaries, the holding of meetings by managers or beneficiaries, the use of a "charter" or "by-laws," the existence of "control" by the beneficiaries over the affairs of the organization, or upon other minor elements. They serve to emphasize the fact that an organization possessing them should be treated as a corporation, but they are not essential to such classification, for the fundamental benefits enjoyed by a corporation, as outlined above, are attained, in the case of a trust, by the use of the trust form *itself*. The Act disregards the technical distinction between a trust agreement (or declaration) and ordinary articles of association or a corporate charter, and all other differences of detail. It treats such a trust according to its essential nature, namely, as an association. This is true whether the beneficiaries form the trust or, by purchase or otherwise, acquire an interest in an existing trust.

The mere size or amount of capital invested in the trust is of no importance. Sometimes the activity of the trust is a small venture or enterprise, such as the division and sale of a parcel of land, the erection of a building, or the care and rental of an office building or apartment house; sometimes the activity is a trade or business on a much larger scale. The distinction is that between the activity or purpose for which an ordinary strict trust of the traditional type would be created, and the activity or purpose for which a corporation for profit might have been formed.

ART. 901-4. *Partnerships*.—The Act provides its own concept of a partnership. Under the

term "partnership" it includes not only a partnership as known at common law but, as well, a syndicate, group, pool, joint venture, or other unincorporated organization which carries on any business, financial operation, or venture, and which is not, within the meaning of the Act, a trust, estate, or a corporation. On the other hand the Act classifies under the term "corporation" an association or joint-stock company, the members of which may be subject to the personal liability of partners. If an organization is not interrupted by the death of a member or by a change in ownership of a participating interest during the agree period of its existence, and its management is centralized in one or more persons in their representative capacities, such an organization is an association, taxable as a corporation. As to the characteristics of an association, see also articles 901-2 and 901-3. The following examples will illustrate some phases of these distinctions:

(1) If A and B buy some acreage for the purpose of subdivision, they are joint adventurers, and the joint venture is classified by the Act as a partnership.

(2) A, B, and C contribute \$10,000 each for the purpose of buying and selling real estate. If A, B, C, or D, an outside party (or any combination of them as long as the approval of each participant is not required for syndicate action), takes control of the money, property and business of the enterprise, and the syndicate is not terminated on the death of any of the participants, the syndicate is classified as an association.

No. 10352

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

HELM AND SMITH SYNDICATE,

Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITIONER'S REPLY BRIEF.

THOMAS R. DEMPSEY,
ARTHUR H. DEIBERT,
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ARGUMENT.

I.

The Legal Relationships Existing Between Petitioners and Outside Parties, During the Period When No Trust Agreement Was in Effect, Go to the Substance Rather Than the Form of the Controversy.

Since this case first arose, respondent has sought to brush aside the fact that at the time that the bulk¹ of the income in controversy was realized, there was no trust agreement in effect as between the members of petitioner-syndicate.

¹Petitioners concede that some income was realized while the trust agreements were in effect, as pointed out by respondent in the footnote on page 23 of his brief.

By so doing, respondent believes himself entitled to ascribe legal characteristics to the organization, during this period, which it did not have, and to overlook the fact that, during said period, it had characteristics, which are the antithesis of those required to establish the "association" status contemplated by the law.

On page 24 of respondent's brief the lack of existence of a trust agreement is described as a "technicality," reliance on which by petitioner is said to be a subordination of substance to form.

For all respondent's claims that this fact is a mere technicality he has not and cannot overcome petitioners' showing that upon revocation of the trust agreement petitioners lost all the economic benefits attributable thereto and exposed themselves to all the obligations and hazards of doing business as joint venturers or principals and agent. However vigorously respondent struggles to escape admitting it, the facts are:

1. That petitioners revoked the trust for the purpose of enabling them to consummate certain oil leases without the necessity of the complicated proceedings required by a trustee.²

2. That upon revocation of the trust agreement the rights, powers, privileges, immunities and obligations of the petitioners were no longer governed by that agreement but by the unwritten agreement that Helm should lease petitioners' property as their agent and co-adventurer. [R. 181.]

²Admitted by respondent's brief, page 23; also stipulated [R. 27].

3. That since, after revocation, Helm acted with the consent and on the authority of the nine co-owners, they would each have been legally liable for any obligation incurred by Helm within the scope of his authority.

4. That since, after revocation, Helm acted by virtue of the authority vested in him by the co-owners, such authority could have been revoked by any co-owner; any co-owner could have demanded partition of the property, and, the death of either Helm or any co-owner would have revoked Helm's authority to act.

5. That during this period no one of the co-owners had any interest which was transferable or assignable without revoking Helm's authority to act, or which even remotely resembled the assignability characteristic of shares of corporate stock.

6. That title to the land was held in the name of Helm, an individual, whose death would profoundly have affected the continuity of the enterprise.

The hazards which the petitioners incurred by revoking the trust in order to consummate contracts with the oil companies were bottomed in the basic laws of contract, agency and property. Upon these legal relationships rested the economic benefits and burdens (and *a fortiori* the *substance*) involved in the transactions conducted by the petitioners.

When, therefore, respondent says that petitioners' assertions are not in accord with the facts³ he does so in contradiction to facts to which *he* has stipulated.⁴

³Respondent's brief, pages 12, 13, 15 and 16.

⁴Respondent stipulated that the trust was revoked for purposes associated with *bona fide* business transactions [R. 27].

That the revoked trust was subsequently re-established by the petitioner does not alter the fact that in transacting business respecting the land they acted in a manner utterly distinct from and dissimilar to the manner in which corporations act. The economic benefits which they enjoyed and the burdens and hazards they incurred were those of co-adventurers or principals. That was the *substance* of the situation.

In his brief (pp. 12-13) respondent states that petitioners' reference (on pp. 19-20 of their brief) to the provisions of the California Civil Code have no pertinency in this case and are not in accord with the facts. The portions of petitioners' brief to which respondent refers constituted the discussion of the legal characteristics of the organization at the time *no* trust agreement was in effect.⁵

Thus it is *respondent's* argument which is not pertinent under the facts; for only by adopting the fiction that Helm acted as a trustee, even though his trusteeship had been revoked, can respondent find a basis for those legal characteristics which he must establish to prevail.

In the absence of a trust relationship the rights, powers, obligations and immunities of the parties necessarily have to be determined from the basic law of California in the light of all the facts. Once those matters are established it is then necessary to determine whether, under the federal taxing statutes, these legal characteristics bear such similarity to those of a corporation as to render petitioner-syndicate taxable as such.⁶

⁵See heading, page 18, petitioners' opening brief.

⁶When petitioners use the words "legal characteristics" such words are intended to mean the legal characteristics which determine economic benefits and burdens. "Similarity" when so used means similarity of economic benefits and burdens, not similarity of forms.

Petitioners think it obvious for the reasons set forth in their Opening Brief (pp. 18-23), that the similarities of the corporate form of business enterprise were utterly lacking during this crucial period.

II.

During the Period in Which the Trust Agreements Were in Effect Petitioners' Organization Lacked the Essential Elements of an Association or Corporation as Contemplated by the Law.

Respondent insists⁷ that it is resemblance, not identity to the corporate form of enterprise which renders an unincorporated group an association. Petitioners have no quarrel with that proposition and regard *Bert v. Helvering*,⁸ as a sound exposition of the principle that the similarities and dissimilarities of an organization to the corporate enterprise must be weighed to determine status of the taxpayer.

Respondent, however, in discussing the various characteristics of petitioner-syndicate repeatedly uses words to the effect that this feature or that is merely a further resemblance to, or a feature distinguished from, those of a corporation.⁹

Now obviously while one dissimilar characteristic alone may not be sufficient to distinguish an organization from a corporation, each feature added to the dissimilar side of the scales brings the organization farther over the line of distinction.

⁷Pages 8, 14, 15 and 16 of his brief.

⁸92 F.(2d) 491 (App. D. C.), quoted on page 17 of respondent's brief.

⁹Respondent's brief, pages 14, 15 and 16.

This is the nub of petitioners' argument in this case. The Tax Court¹⁰ admitted that this was a border line case, yet failed to consider or make findings respecting certain essential characteristics of the organization. In this we think the Tax Court erred, because a consideration of those characteristics discloses, as a matter of law, greater dissimilarity than similarity to the corporate form of enterprise.

In the first place it failed utterly to consider the economic benefits and burdens attributable to the relationship of the parties during the period when no trust was in effect. By virtue of the nature of the relationship of the parties, during this period, the participants were subject to all the risks and hazards, including personal liability and lack of continuity of the enterprise, to which partners are subject.¹¹

Secondly, even under the trust form, the participants did not limit their liability for obligations incurred in the venture to the property embarked in the enterprise.¹²

Respondent (Brief pp. 15-16) seeks to avoid this feature by saying that the liability of the participants was not unlimited and that the trust agreement "seems to recognize that personal liability of the participants was limited to the trust property." The record shows that nothing in the agreement in any way limited the amount which participants could be called upon to pay. The provision for selling a participant's interest was additional

¹⁰R. 19.

¹¹See Commissioner's Regulations 101, Arts. 901-1 and 901-4, pages 28-30, respondent's brief.

¹²*Morrissey v. Commissioner*, 296 U. S. 344, 359, 56 S. Ct. 289, 80 L. Ed. 263.

security for the performance of his obligations and in no way limited the extent of such obligations.

Thirdly, while transferability of beneficial interests is not of itself a controlling factor, in this case it is another *feature* of the organization which is dissimilar to the corporation. The lack of transferable certificates (not lacking in the *Morrissey* case, *supra*) has been held by this Court to be a feature of dissimilarity.¹³ Moreover, in the instant case, assignment was possible only upon the assumption by the assignee of the obligations of the assignor regarding the property. [R. 60 and 189.] Such assignability involves *economic burdens and hazards* not incurred by the owner of corporate stock, and the mere *fact* of assignability here does not reduce those hazards one whit.

Fourth, respondent seeks to avoid petitioners' argument as to the continuity of the enterprise by stating that it is doubtful whether Section 2280 of the California Civil Code applies to business trusts.¹⁴ It happens that the *Goldwater* case was decided in 1930. The amendment to Section 2280 of the Civil Code making all trusts revocable unless *expressly* made irrevocable was not added to the Code until 1931.¹⁵

It will be noted also that the Code, Section 2280, says that "*every* voluntary trust shall be revocable." There are no exceptions unless made in the trust instrument. (Emphasis ours.)

There are other kinds of continuity, which the corporate form of enterprise affords, than the continuity which is

¹³*Commissioner v. Gerstle*, 95 F.(2d) 587, 589.

¹⁴Citing *Goldwater v. Oltman*, 210 Cal. 408, 292 Pac. 624.

¹⁵Amended Stats. 1931, p. 1955.

unaffected by death. As a matter of economic benefit and burden the interruption of continuity by the death of a participant is often less bothersome than the interruption which occurs when one participant decides for some reason or other that he will withdraw. By so doing he may withdraw sufficient assets to upset the entire enterprise. Such was the situation here, where, under Civil Code, Section 2280, any participant could revoke the trust and demand a partition of his share of the land. No corporation or stockholder runs such risks. This dissimilarity to the corporate enterprise is vital to this case.

Fifth, in the matter of management, Helm did *not* have the complete powers. His powers were limited to holding, "legal title, * * * to manage and control the *same* [legal title], to sell, convey, lease, including oil and gas leases, * * * to encumber the same and to execute and deliver any such conveyances, encumbrances, leases and oil and gas leases, providing, however, said trustee shall first have obtained from the committee hereinafter provided, written consent to so execute and deliver such conveyances, leases * * *." (Emphasis ours.) [R. 58.]

Helm had no power to operate the property for business purposes. His powers were limited to making certain specific dispositions of the property and even these were subject to the consent of the participants' committee. Thus, in substance, Helm was not a manager at all but a mere repository of title.¹⁶

Commissioner v. Gibbs-Preyer Trusts, Nos. 1 & 2,
117 F. (2d) 619;

Cleveland Trust Co. v. Commissioner, 115 F. (2d)
481.

¹⁶Cf. *Commissioner v. Gerstle*, *supra*.

In the latter case it was said:

“The mere receipt of income from leased property and its distribution to *cestuis que trustent* amounts to no more than receiving the ordinary fruits that arise from the ownership of property and does not constitute doing business. * * *

The respondent's efforts to distinguish the *Gerstle*¹⁷ and *Rector & Davidson*¹⁸ cases from the instant one are inconclusive.

Respondent suggests (page 20 of his brief) that the Circuit Courts in those cases merely affirmed the Board of Tax Appeals. We do not think the appellate tribunals abdicated their judicial functions in either case, but decided the cases on legal grounds which they believed produced the correct answer.

Respondent says (Brief, p. 21) that in the *Gerstle* case the syndicate members were considered equitable owners of the land, whereas here the petitioners have merely a right to the performance of the trust.

We are unable to find a basis for such distinction. In both cases the parties purchased undivided interests in land, title to which was taken in the name of one or more of their number. In both cases a committee of the participants was designated to act for all as managers. In each case legal title to the land was held, at certain times, by trustees.¹⁹ In each case, members of the syndicate were obligated to contribute the money required to purchase

¹⁷*Commissioner v. Gerstle, supra.*

¹⁸*Commissioner v. Rector & Davidson*, 111 F.(2d) 332; certiorari denied, 311 U. S. 672.

¹⁹Here Helm was trustee for title; in the *Gerstle* case certain title companies performed that function.

the property and to provide for its protection. In each case the *members themselves*, not a trust entity, assumed and undertook to discharge any obligations arising out of the venture in respect of the property. These are the characteristics of *ownership* (albeit equitable) as distinguished from a mere claim for a share of gains from a separate business enterprise. This Court in the *Gerstle* case said:

“It seems clear that the members were equitable owners of the real property acquired, and that their beneficial interests were not merely personal claims against the syndicate managers.”

Respondent claims a further distinction between the two cases, saying (Brief, p. 21) that no assignment by any member in the *Gerstle* case was to release him from liability unless the syndicate managers so agreed. Such a distinction affords respondent no comfort for in each of the two cases the assignee became liable for debts and obligations of the venture over and beyond the property embarked in the enterprise. This Court in the *Gerstle* case considered the assignability of interest there present as legally dissimilar to the assignability of corporate stock when it said:²⁰

“Their beneficial interests were not readily or conveniently transferable. There were no shares, certificate, or other evidence of interest beyond each member’s copy of the agreement.”

Exactly the same situation existed in the instant case in respect of the assignability of the interests of the petitioners.

²⁰Opinion, page 589.

In a final effort at distinction respondent claims that while liability in the *Gerstle* case was not limited such “does not appear to have been the situation here.” (Brief, p. 21.) That contention is fully answered by the following quotations:

“The trustee shall ascertain and pay any amount of principal and interest which may become due and payable * * * upon *any* encumbrances hereinafter placed upon said property including taxes and assessments, providing, however, that each of the beneficiaries shall provide their proportion of the funds necessary for the payment of the same * * *.”
[R. 58.]

The foregoing provision appears in the agreement of the petitioners in the instant case.

“* * * It was provided that each member on executing the agreement should set down after his name the amount he would contribute to the operations, ‘and his interest in the properties, profits, obligations, debts and losses of the syndicate shall be that proportion thereof which the amount set after his signature bears to the total of the amounts set after the signatures of all the syndicate members.’ It was agreed that the funds required for the operations of the syndicate should be provided by the members, who were to pay to the managers, on call, their respective proportions of the total sum called for, ‘provided that no syndicate member shall be called upon, prior to the termination of the syndicate, to pay a greater aggregate amount than that set after his signature hereto.’ The managers were empowered to borrow money in their own names or in the names of others for the benefit of the syndicate, and the members were liable for the repayment thereof in proportion to their respective interests. * * *.”

The foregoing language taken from the opinion in the *Gerstle* case shows that the obligations assumed by the participants in both of these cases were almost identical, the only differences being those of phraseology. Respondent's contention that the cases are distinguishable on this ground manifestly does not bear analysis.

A thorough analysis of the *Gerstle* case discloses such a marked similarity to this case in respect of the economic benefits enjoyed and the burdens and hazards assumed that the instant case could be decided on the authority of that case alone. Many of the provisions of the agreement between the participants are identical in substance if not in form of phraseology. The instant case, however, is even stronger in that when the parties came to the point of entering into important binding contractual obligations, they revoked the trust and appointed Helm their sole agent to act for them in leasing the land. Thus the trust here is shown to have been not a device for doing business but a device for holding title. The powers conferred on Helm therein were incident to that purpose.

Conclusion.

The organization of these petitioners was neither an association nor a corporation during any portion of the year 1938, as contemplated by the law.

The decision of the Tax Court should be reversed.

Respectfully submitted,

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Attorneys for Petitioners.

No. 10425

United States
Circuit Court of Appeals

For the Ninth Circuit.

FRANK L. ARAGON and Other Applicants, Members of
Alaska Cannery Workers Union Local No. 5, and ALASKA
CANNERY WORKERS UNION LOCAL No. 5 on Be-
half of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF
THE TERRITORY OF ALASKA, NOBLE DICK, R. E.
HARDCASTLE and R. S. BRAGAW, as Members of
and Constituting Said Commission, and ALASKA PACK-
ERS ASSOCIATION, a Corporation, ALASKA SALMON
COMPANY, a Corporation, and RED SALMON CAN-
NING COMPANY, a Corporation,

Appellees.

Transcript of Record

In Two Volumes

VOLUME I

Pages 1 to 394

Upon Appeal from the District Court of the United States
For the Territory of Alaska
First Division

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Territory of Alaska

Alaska Unemployment Compensation Commission
Hearing Before Referee

June 17-19, 1940

10:00 A.M.

FRANK L. ARAGON, et al., Members of Alaska
Cannery Workers Union, Local 5, San Fran-
cisco, California, S.S.A. No. 571-09-8139
Claimants

ALASKA SALMON INDUSTRY INC., San
Francisco, California

Last Employer

601 News Building
San Francisco, California

Referee: HENRY RODEN

Appearances:

MARSHALL P. MADISON,

Counsel for Alaska Packers and Red Salmon
Companies
Pillsbury, Madison & Sutro,
225 Bush Street, San Francisco.

WILLIAM OLIVER,

Counsel for Alaska Salmon Company,
Earl & Hall & Gerdes,
215 Market Street, San Francisco.

HERBERT RESNER,

Counsel for Alaska Cannery Workers Union,
Local No. 5, C.I.O.,
544 Market Street, San Francisco. [1*]

TRANSCRIPT OF EVIDENCE

CLAIMANTS' EXHIBIT No. 1

(Copy)

ANDERSON & RESNER

Attorneys at Law

544 Market Street

San Francisco

May 11, 1940

Alaska Unemployment Compensation Commission
Juneau, Alaska

re: Frank L. Aragon

Social Security No. 571-09-8139

Gentlemen:

We are counsel for the Alaska Cannery Workers Union, Mr. Aragon being a member of said Union.

Our client has filed a claim for unemployment benefits through the California Department, under the interstate agreement and yesterday we received a letter from your department in which you advise that our client is disqualified for a period of eight weeks, the reason for such disqualification being an alleged labor dispute.

At the present time no member of the Alaska Cannery Workers Union, including our individual client, is engaged in a labor dispute. The San

*Page numbering appearing at foot of page of original certified Transcript of Record.

Claimants' Exhibit No. 1—(Continued)

Francisco packers do not intend to go to Alaska this year and hence the inability of our individual client to work in Alaska is due to no fault of his and in particular it is no fault of the Union, but is the fault, if fault it may be called, of the Alaska Packers who have their offices in San Francisco.

We might state that there, of course, can be no labor dispute when actual employment does not exist, and as you know this is mere seasonal employment.

We would request not only on behalf of our above named individual client, but on behalf of all the members of the Alaska Cannery Workers Union that a hearing on this question be scheduled in San Francisco, the local State office to act as a referee in the matter to determine the question whether a labor dispute actually exists, unless you are constrained to accept this explanation of the inability of members of this Union to work in Alaska this season.

Yours very truly.

GEORGE R. ANDERSON

(Stamped)

GRA:eb

cc: Alaska Cannery Workers Union
Department of Employment,
State of California. [5]

Claimants' Exhibit No. 1—(Continued)

(Copy)

May 14, 1940

Alaska Unemployment Compensation Commission
Juneau, Alaska.

Re: Members named on attached list.

Gentlemen:

You have written to our above named members advising that they are not eligible for unemployment payments by virtue of the fact that you claim their present unemployment is due to a labor dispute.

Please be advised that our members' present unemployment is not due to a labor dispute and that we request a hearing be held in San Francisco at your earliest convenience in order to determine said question.

We incorporate herein our letter to you dated May 11th, 1940, in which reference is made to the case of Frank L. Aragon, Social Security No. 571-09-8139.

Yours very truly,

SAM YOUNG,

Secretary

ALASKA CANNERY WORK-
ERS UNION #5

SY:D

Encl

uopwa-34

Claimants' Exhibit No. 1—(Continued)

Claimants' Exhibit No. 1

(1)

Name	Social Security No.
Sing Tom	567-16-7833
Quong Chin	567-16-7814
Sam You	567-16-7816
Alfonso L Plasabas	555-03-5094
Philip R. Olita	571-09-6714
Mamerto Diangzon	571-09-6644
Vincente Osorio	567-16-7645
Sotero Cadano	566-14-4924
Albert Rangel	566-10-3883
Cornelio Bayubay	558-10-4752
Frederick Balmania	566-16-8364
Clarence Davis	566-03-1697

[6]

(2)

Elioterio Amable	566-14-2954
Juan Jokoya	566-09-5148
Nuncio Ayalas	577-26-0608
Manuel Jackson	556-03-0779
Ramon Burciaga	566-05-6294
Julian Guerrero	566-10-0539
Luis Castro	566-12-7376
Alejandro Nunez	556-16-7125
Candido Santander	566-10-9326
Anacleto Ingreso	566-16-0247
Alfonso Cesena	566-14-3576
Frank Gironella	567-16-7704
Albert A. Eslera	571-09-6691
Takeo Ishimori	566-14-8572
Albert Valencia	566-02-6914

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Minoru Hatta	567-07-1984
Sixto Escalona	567-16-7830
Emilio Westphal	571-09-8105
Chow Wong	546-01-3044
Frank Fukuda	570-10-9834
Harry K. Kralian	571-09-8106
Filimon Vargas	566-10-3122
Esteban Cortez	566-12-2524
Philip Cano	561-03-5314
Antony Palacio	566-03-8724
Agapito Exchavaria	566-03-9498

3

Chan D Tsue	561-05-8489
Miguel Vengua	556-01-7005
Gregorio Avelino	566-12-0447
Angel Vasquez	566-05-4436
Bernardo Gonzales	566-12-0084
Akira Kobata	556-16-2225
Chan Foon	546-16-3416
Woo Yim	566-16-9334
Rahmat A. Sadique	566-14-8621
Pedro T. Villas	571-09-6799
Lucio Macias	566-01-1818
Javier Andrade	566-09-5708
Hay Hoo Soo	567-16-7836
Suey Song	566-10-3629

[7]

4

John Harris	566-12-5381
Samuel Levine	561-07-0046
Jesus M. Burciaga	566-12-9291

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Loreto Ramirez	700-10-9426
Conrado Amador	571-09-6704
John Gallegos	566-18-8245
Jose De Avila	566-03-3901
Gilberto Galaviz	566-14-4751
Memesio Rojo	546-16-2945
Salvador Garcia	566-05-1452
Margarito Gonzales	571-07-8102
Sherman Shelton	566-01-6388
Victoriano Landicho	566-12-0088
Turo P. Famero	569-18-2513
Richardo Estrada	566-10-9605
Henry LaDezma	560-01-9976

5

Tiburcio Y Vios	566-16-1781
Antonio Mateo	552-14-4960
Zee Yum	566-16-6916
James J. Torres	566-14-8267
Francisco Flores	566-14-4519
Wong G. Fong	566-07-1988
August Santiago	566-14-1605
Juan E. Perez	566-05-1960
John J. Puga	566-07-6501
Sianing Cabotaje	566-16-2280
Manuel Garcia	566-07-0200
Louis Zuazaga	566-07-0393
Milton Olguin	566-01-4382
Frank Segovia	566-07-4020
Pete O. Pedroza	566-16-6290
Cipriano Conahap	546-18-3020

[8]

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Andy L. Usita	566-14-5511
Bernardino Olmos	566-14-2386
Tony Perez	566-01-5644
Alex Montelongo	566-01-0621
Stephen Jesse Medina	561-05-3322
Herminio Mora	566-03-2303
Pascual Garcia	566-09-1973
Theodora Martinez	566-01-0901
Percy T. Duque	566-10-6344
Emilio Montoya	566-12-9101
Jose Maganda	566-01-5620
Albert Bot SooHoo	571-05-3511
Vincente Abringe	566-10-5295

6

Yen Shoo	571-01-6641
Silverio Beza	571-09-6443
Look Low	547-26-3826
Estanislao Banaag	561-05-3285
Urbano Favela	566-12-3338
Maurice Whaley	567-16-7798

7

Joe Corry	572-03-0323
Vincent A. Rendon	566-03-1644
Joe Moy	566-16-9287
Ernest Garcia Valverde	566-09-9342
Manuel Joseph Valdez	566-12-5223
Julian Egcasenza	566-03-2466
Virginia H. Nixon	561-05-7135
Ah Gom	566-16-9313
Robert Castillo	700-10-7381

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.	
John Fancolli	556-16-3214	
Constantino Herran	566-14-2950	
Francisco de Pano	567-16-7811	
Jose G. Silva	561-05-2614	[9]
Antonio Rivera	547-26-3085	
Severo Cablayan	571-07-8143	
Tin Chin	572-18-7403	
On Goy Wong	554-07-1407	
Richard Pebeco	571-09-8135	
8		
Frederick Cordova	566-14-6010	
Manuel Faria	566-03-8721	
Alfonso Cesena	566-14-3576	
Jesus Mendoza	570-10-3330	
Young Lee	552-03-4888	
Lung Wong	566-16-9302	
Horace Wah Lee	565-01-6987	
Harry Chin	566-16-9331	
Ng Gun	566-16-9289	
Chew Chong	566-16-7267	
Daniel Cosio Castro	566-07-5673	
Benjamin Torres	566-12-8164	
Raymundo Galeana	571-09-8144	
Antonio M. Moreno	566-14-5060	
Chew Foon	571-09-6646	
Ling Hee	571-05-4370	
Leon Rotao	566-07-5251	
Manuel Santo Lobo	566-14-4111	
Jesus Avila	561-05-7963	
Luis Perez	566-07-1587	

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Alfredo Varela	566-16-1740
Thomas T. Mendoza	566-12-5135
Ezequiel Fuentes	566-12-9296
Juan Jokoya	566-09-5148
Jesus Bran	566-16-4616

9

Toshizo Asari	547-03-2338	
Yojiro Amemiya	566-12-2518	
James R. Livelo	571-07-6788	
Conrado Jalocon	566-14-2989	
Estaban Omandan	711-05-0059	
John Dudico Lachica	571-09-6716	
SooHoo B. Jow	567-16-7793	[10]
Genaro C. Mabares	571-09-6801	
Pastor de Padua	571-09-6801	
Domingo Yota	561-05-2628	
Armando Augustino	567-16-7809	
Fong Chow	566-16-9311	
Joe Wing	566-16-7208	
Daniel Quipotla	567-16-7707	
Guillermo A. Andrade	566-14-1449	
Enrique Romo	550-10-8806	
Emilio Caasi	567-16-7825	
Cirilo Zarno	571-09-7158	

10

Chi Saw	566-16-7832
Arthur Bravo	566-03-1655
Victor Carinos Gomez	566-05-4376
Alfredo Ruiz	566-09-9057
Amador Troche	566-14-3097

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Ygnacio Mendoza	566-14-9916
Loreto Osuna	566-12-5157
Marcelino Caliao Sirna	566-16-2776
Anton J. Wilbertz	566-03-3254
Wilhelm A. Jensen	547-07-3907
Manuel Simon	566-16-0756
Antonio Pomares	566-16-1785
Vincente Rojo	566-12-3345
John Beles Fraticelli	560-03-5716
Quong San	572-78-7401
Daniel Garcia	571-09-6703
Felipe Arrieta	566-14-7412
Epifanio Ortiz	566-05-0423
Silvino Rodriguez	573-16-8745
Vincente Gomez	566-14-0082
Louis Joseph Murray	566-16-6292
Julio Bastida	566-14-5663
Ton Toy	566-07-6751
Frank Lester Stout	530-03-1293
Lauribo V. H. Florup	558-01-1002
Jose Huguet	552-14-6393
Mee Lai	571-09-6712
Chong Foon Au	552-14-8171
Gem Jew Wing	566-16-7261
Henry Borrero	566-14-1602
Macedonio Gonzales	566-05-2442
Miguel Sanhuesa	566-14-2992
Abdon Tomate	566-16-2282
John Gordon Livingston	565-10-8721
Sianing Cabotaje	566-16-2280

[11]

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Maximo Lucerna	566-05-9556
J. D. Ferniz	567-07-1512
Mariano J. Fernan	566-10-3866
Wm. L. Noland	565-01-8737
Manuel Defuentez	566-07-5674
Edward Lecaros	566-18-0100
Frank Alvis	566-14-0175
Chester Wells	566-01-0325
Gilbert Vargas	566-14-0084
Hugh Lee Gadson	566-05-4474
Arthur Byron Smith	566-07-0395
Juan Arriola	566-12-6244

12

UNEMPLOYMENT COMPENSATION
FOR ALASKA

Wilburn Burton	566-01-2044
Gilbert Vargas	566-14-0084
Juan Peralta	546-16-2252
Ignacio Castaneda	566-14-6930
Antonio Gomea	566-12-5120
Ignacio Gallego	566-14-1606
Takuro Omi	554-18-2015
Arthur Chan	566-16-9966
Antonio Fuentes Gomea	566-05-2881
George Agrisula	561-03-4430
Marin Lopez	566-14-4939
Frederick Balmania	566-16-2364
Jim Lee	566-16-6912
Jose DeAvile	Book #312 [12]

CLAIMANTS EXHIBIT No. 2

Alaska Salmon Co.
525 Market Street,
San Francisco, California.

April thirtieth, 1940.

Alaska Cannery Workers Union
Local No. 5, C. I. O.
32 Clay Street,
San Francisco, California.

Attention Mr. Rendon:

As your organization has been advised by the Alaska Salmon Industry, Inc., this company cannot make any expedition to Alaska out of San Francisco this season and accordingly will not have employment, or be able to ship any men on our steamers to our various canneries this year.

Despite this decision on our part, we are desirous of having a clean record with your organization and refer you to our correspondence over the claims ex this company during the 1938 season, your letter of November 8, 1938, and subsequent correspondence. Despite the fact that we are advised by our attorney that your claim was not filed in accordance with the provisions of the 1938 contract, which stipulates that all claims must be filed within ten days after the return of the expedition, we believe it to be to the best interests of your organization and ours that the claim be adjusted. Accordingly, upon receipt of advice from you that you will write the company a letter stating that all claims of whatever nature have been satisfactorily

settled upon our payment of 50% of this claim, of \$25.20, we will hand you our check in the above amount.

We trust that it will be agreeable to you to accept this offer on our part and distribute the funds to the forty-two men involved in this claim. We await your advice in connection with this.

For your information, we enclose herewith copy of your letter of November 8, 1938.

Very truly yours,

ALASKA SALMON CO.

H. A. FLEAGER (Signed)

Enc.

HAF:EJ [13]

CLAIMANTS EXHIBIT NO. 2a

WOOD RIVER PERSONELL OF
1939 SEASON

1. Albert Sanchez
2. Albert Enger
3. Angel Rodriguez
4. Andrew Pena
5. Bernardino Olmos
6. Borge Therkelsen
7. Bill Murrish
8. Ceferino Miranda
9. Claudio Vallva
10. Clarence Wilson
11. Chris Avendane
12. Charles Nosaka
13. Charles Lucero

Wood River Personnel—(Continued)

14. Charles Rothweiler
15. Doningo Fahardo
16. Doningo Gonsalez
17. Frank Andrews
18. Francisco Echeverria
19. Francisco Gomez
20. Francisco Villa
21. Florencio Correa
22. Gregorio Rodriguez
23. Gaudin Bulangis
24. Henry Gutman
25. James Torres
26. Joseph Conway
27. Junius George Saore
28. Joe Ferniz
29. Jose Almaeda
30. Jimmy Kubo
31. Luther Smith
32. Manuel Rodriguez
33. Manuel Loscano
34. Mike Martin
35. Margarito Gonsalez
36. Malcolm Ryder
37. Natividad Medina
38. Roumaldo Spanol
39. Ramon Losada
40. Santiago Kaling
41. Sidney Wilson
42. Theodoro Martinez
43. Ushigico Uyeda
44. Vecinte Rodriguez

Wood River Personnel—(Continued)

- 45. Vincecio Milicich
- 46. Wilbur Wellman

Alaska Salmon Personnel—(Continued)

- 206. William Rooney
- 207. Frank Perez
- 208. Ricardo Canacho
- 209. Hassan Sugar
- 210. William Erickson
- 211. John Lozano
- 212. Marion Washington
- 213. E. Custodio
- 214. J. Abigano
- 215. Frank Nieve
- 216. J. Perla
- 217. W. S. Wilund
- 218. F. Lucas
- 219. N. Reyes
- 220. J. Delgadillo
- 221. P. Guzman
- 222. A. Orta
- 223. G. Solbakken
- 224. G. Santiago
- 225. D. Katanghal [14]
- 226. Bob Santos
- 227. E. Ramirez
- 228. V. Marston
- 229. L. Ferris
- 230. J. Varela
- 231. F. Jurado
- 232. T. Nichols
- 233. L. Marston

Alaska Salmon Personnel—(Continued)

- 234. E. Gonzales
- 235. L. Lapian
- 236. R. Campus
- 237. A. Brisbane
- 238. P. Elustre
- 239. Stephen Glumaz
- 240. Harry Canty
- 241. Archie McLaxtey
- 242. Charles Carroll
- 243. John Williams
- 244. Paul Johnson
- 245. Richard Throll
- 246. Bernardino Leyo
- 247. Thomas Miller
- 248. Richard Perinoni
- 249. P. Rivera
- 250. Carlos Santiago

- 105. Salvatore Garcia
- 106. Ow Chun
- 107. Joe Rendon
- 108. Francisco Barreras
- 109. Antonio Liealsi
- 110. Aurelio Ped
- 111. Manuel Rodriguez
- 112. Nemesia Rojo
- 113. Geronimo Ibarra
- 114. Milton Hachey
- 115. Macino Salas
- 116. Jack Lopez
- 117. James Alexander

Alaska Salmon Personnel—(Continued)

118. Carlos Ruiz
119. Calixto Basallo
120. Pat Adams
121. Thomas McGuire
122. Albert Nerva
123. Edward Morales
124. E. M. Cadasas
125. Virgilio Ruiz
126. John Pacheco
127. Chan Lun
128. Dewey Loftus
129. Anthony Lundin
130. Bedasto Kaminade
131. Manuel Molix
132. John Harris
133. Cecilio Figueroa
134. Edward Matos
135. Rafael Juncas
136. Charles G. Fondecas
137. Nufo Caravantes
138. Fernando Feliciano
139. V. Bello
140. M. Patino
141. Ernest Lam
142. Daniel R. Pillar
143. Tibercio Vios
144. Charles Bush
145. Joseph Publete
146. Teofilo Salom
147. Ezekial Orteiz
148. Marcello Berzosa

Alaska Salmon Personnel—(Continued)

149. Andres Gonsalex
150. Louis W. Warner
151. Wilburn Burton
152. See Hock Chin
153. Felix Torres
154. Cirilo Gamboa
155. Andrian Santos
156. Richard Birch
157. Albert Molinar
158. William Weller
159. Raymond Angkahan
160. Knut Emanuelson
161. W. I. Fruit
162. A. Ve Line
163. Addison S. Keeler
164. Henry Barrie
165. Lasina King
166. D. Paraohao
167. L. Acedira
168. E. Doria
169. Pete Morales
170. Toy Ping
171. Alfonso Orozo
172. Jesus L. Gonzales
173. George Sato
174. Yoshio Azuma
175. Thomas Ruesch
176. Ching Chong
177. Pete Garcia
178. A. Armenta
179. Mauro Garcia

Alaska Salmon Personnel—(Continued)

180. Charles Taime
181. Aurelio Madrid
182. George Canete
183. Felix Adonis
184. William Best
185. Felix Abargan
186. John Papov
187. Alfredo Ruiz
188. H. Medina
189. Fernando Palencia
190. Max Whittaker
191. Firmen Bilbao
192. John Melnikoff
193. Mario Fontanella
194. Hermenigeldo Lompot
195. Victor Fidalgo
196. Armando Resurrection
197. Eugenio Sarmiento
198. J. Collondres
199. Ignacio Castaneda
200. Philip Dagdagan
201. K. Oliva
202. Antonio Rivera [15]
203. Gabino Sato
204. George Steward
205. Morris Fishman

ALASKA SALMON COMPANY PERSONNEL
OF 1939 SEASON

1. Vincente Rendon
2. Harry Hirose
3. Albert Soo Hoo

Alaska Salmon Personnel—(Continued)

4. Carlos Ross
5. Ramon Becerra
6. Liberio Morejon
7. Camilo Coslero
8. Pedro Prats
9. Alex Santana
10. Lociis Luazagna
11. John Molicillo
12. Memesio Garay
13. Juan de Jesus
14. Julian Vargas
15. John Gotty
16. Hilarion Ramos
17. John Marin
18. Regino Llamas
19. Frank Gongales
20. Jesus Burciaga
21. Henry Pedro
22. Francisco Calvo
23. Julian Orleans
24. Manuel Vargas
25. Samuel Rodriguez
26. Raymond Ojeda
27. William Larson
28. Robert Alverque
29. Clyde Meadows
30. Joe Cross
31. Turner Henderson
32. John Vallejos
33. Mike Ibanez
34. Stephen Medina

Alaska Salmon Personnel—(Continued)

35. John Boknight
36. Edward Vences
37. Juan Santisteban
38. Karl Orth
39. E. Yanca
40. Manuel Maymuni
41. Frank Kehr
42. Joe Escoto
43. Don Stotle
44. Alvin Faurot
45. Jaime De Jesus
46. Alex Rodriguez
47. Nariano Ferman
48. Hedley Jones
49. Pete Real
50. William Glassman
51. Trini Zepeda
52. Emilio Romos
53. Chalres Hurst
54. Frank Aranguera
55. Jose Barajas
56. Jesus Perez
57. Victor Antonio
58. Candido Santander
59. Shigeto Yamamoto
60. M. B. Rendon
61. Ambrocio Guillermo
62. Frank Guillen
63. William Rivera
64. Domingo Ponce
65. Joe Mendez

Alaska Salmon Personnel—(Continued)

66. Joe Gonzales
67. Edward Romero
68. Mack Rabunal
69. Robert Samayoa
70. Walter Molina
71. Federico Rivera
72. Bernardo Spaulding
73. John Santiago
74. John Dommguez
75. Richard Camplis
76. Frank Ascencio
77. Frank Torres
78. Temistocles Alcaide
79. Vidal Rivera
80. Simean Noal
81. Henry Ramos
82. Edward McNelis
83. Peter Sanchez
84. John Rosa
85. Andrew Ramirez
86. Joseph Tapia
87. Julia Rivera
88. Howard Lyon
89. Max Tominez
90. Jose Galeano
91. John Figeroa
92. Glasten Fosten
93. Edward Ford
94. Frank Luna
95. Jose Arellano
96. Stan Dahlberg

Alaska Salmon Personnel—(Continued)

97. Jessie Gonzales
 98. Paul Gonzales
 99. Vicent Face
 100. Pedro Vasquez
 101. Anacleto Ingresso
 102. John Morana
 103. Hong Wong
 104. Merced Ayon [16]
-

* * * 10:00 A.M., June 17, 1940, the hearing was convened by Referee Henry Roden * * *

Referee Henry Roden: Well, Gentlemen, it is now 10 o'clock.

First of all I would like to know who is represented at this hearing by counsel?

(Remarks were made off the record.)

Mr. Madison: I would like to move we have a continuance until one o'clock.

Referee Henry Roden: Then, Gentlemen, I guess we had better adjourn until one o'clock.

The Attorney for the Alaska Cannery Workers Union apparently can not be here much before that time; so, we will meet here at one o'clock sharp. There will be no further continuance at that time, though.

(At 10:30 A.M. the hearing was adjourned to reconvene at 1:00 P.M. in the afternoon.)

* * * * *

* * At 1:00 p.m., June 17, 1940, the hearing was reconvened by Referee Henry Roden * * *

Referee Henry Rodin: Gentlemen, the hearing will now come to order.

Now, the record will show that the Alaska Cannery Workers Union is represented by Messrs. Andersen and Resner. I will call again, now, to ascertain if any other union is represented here.

Alaska Fishermen's Union?

Mr. Resner: I thought the only thing in issue here were the claims of the Alaska Cannery Workers Union?

Referee Henry Roden: That is what I understand, but I was informed by the office that the Bay Area District Counsel No. 2?

Mr. Resner: Yes—are interested in these proceedings. And so are the Alaska Fishermens Union as to any information.

Referee Henry Roden: But there is nobody particularly representing them now?

Mr. Resner: Let us pass that for the time being. The Secretary of the District Counsel will be here shortly and we will determine whether or not they want to formally appear. [17]

Referee Roden: Then at the present time the proceeding is on behalf of the Alaska Cannery Workers Union.

Mr. Madison: Do I understand Counsel to say the only matter before us at this time is the appeal on behalf of the Alaska Cannery Workers Union?

Referee Roden: That is the way I understand it.

Mr. Resner: In the first place, before we get into that, I want the record to show at this morning's hearing I was detained in the Criminal Courts

down town and the Secretary of the Union so notified the Commission and asked for a few minutes for me to get here, and I understand this continuance or delay or adjournment was then made on the motion of the operators.

I want to say that criminal matters had precedence and I had to appear there; and, therefore, that explains my lateness this morning.

Now, with regard to these claims, as I understand your law the members of Local No. 5 of the Alaska Cannery Workers Union filed claims for unemployment benefits, and these claims were rejected and each man was given a notice to the effect it was rejected because there was a labor dispute.

Now, your law requires that an initial determination shall be made there was a labor dispute. Now, we don't have any information or knowledge as to how that original determination was made and on what basis it was made; and that is one thing we would like to get an answer to if possible at this time?

Referee Roden: I don't know, myself, how it was made. I am not a member of the Commission and I have no knowledge or information as to what the Commission has done except that the claims were rejected on account of the existence of a labor dispute.

Mr. Resner: That is just the point. Of course, we contend there isn't any labor dispute within the meaning of the Act, and we are at a loss to understand as to how that could have occurred. Apparently the provisions of the Act weren't followed in this regard.

Referee Roden: What we are interested in at the present time, Mr. Resner, is to take some evidence establishing the fact no labor dispute existed so far as you are concerned.

Mr. Resner: That seems to put the burden upon us to establish the fact there isn't a labor dispute.

[18]

Referee Roden: Do you want to put in any evidence? Proceed then.

Mr. Resner: I think before we should proceed we should have some knowledge as to where we stand. Section B of your Act requires for an initial determination and, apparently, those provisions of the Act have not been followed.

Referee Roden: In what respect?

Mr. Resner: In this way—that no initial determination—apparently, an initial determination has been made by the Commission that a labor dispute exists without hearing a word at all from this union on the subject.

Referee Roden: All right. The decision has been made by the Commission, has it not?

Mr. Resner: Yes. We want to know on what basis that decision was made?

Referee Roden: That is immaterial now. They tell you on what basis their decision was made. It was on the basis of a labor dispute.

Mr. Resner: We want to know how they arrived at their conclusion.

Referee Roden: We are now here to take evidence covering that every issue.

Mr. Resner: Well, our objection is noted. In any event, we contend the provisions of this Act

were not followed according to the procedure provided by this Act in determining whether or not this was a labor dispute.

Before we proceed there are some things I want to get clear further, and that is whether we are required to put in the names of all the Claimants or whether those Claimants who have already filed their claims will be considered as having whatever there is decided here apply to them?

Referee Roden: I understand that is the case.

Mr. Resner: In other words, it won't be necessary for us to come forward and give the names of the Claimants. They are already on file with the Commission.

Referee Roden: Yes.

Mr. Resner: Well, I want to make a brief statement first as to what our position is. [19]

In the first place, we are contending this is not a labor dispute but simply a refusal on the part of the Alaska Packers to negotiate an agreement with the Union for the present season in Alaska affecting the Alaska Cannery Workers, Local No. 5, of San Francisco, and that is not a labor dispute; and, therefore, these men are just out of work because of the refusal to enter into this agreement and are entitled to their benefits.

We want to contend, secondly, if under any circumstances this can be considered a labor dispute it is not such labor dispute within the meaning of the Act for these reasons: This is a seasonal industry and the contracts heretofore have been signed for one year—have been negotiated and signed

anew for each season. The contract of last year had expired and a new contract was to be signed for or negotiated for the coming season. There was no contract arrived at. And we contend the failure or the inability to arrive at a contract does not constitute a labor dispute.

Third, going to the Act, itself, referring to Section 5(d), we contend this is not a labor dispute which is in active progress at the factory establishment or other premises at which the workers were last employed.

And then we contend, further, these particular Claimants and the members of this union, under Section 5(d) subsection 2, do not belong to a grade or class of workers which immediately before the commencement of the dispute there were members employed at the premises of which this dispute occurs, any of whom were participating in or directly interested in the dispute. In other words, there was no employment relationship existing which was terminated. And we contend what this Act applies to and only what it applies to is a strike situation where the union may make demands in excess of what they have already and are not met and, therefore, they strike.

We contend this situation isn't a labor dispute at all under that construction of the Act.

Now, there are some workers I don't think there should be any controversy about at all. There are some three hundred Claimants and members of the union who worked last year and have worked for the Alaska Salmon Company. That Company did

not intend to operate under any circumstances this season, and I don't think there should be any question about that. [20]

I want to know if the attorney, whoever it is represents the Alaska Salmon Company, differs with that statement?

Mr. William Oliver: I represent the Alaska Salmon Company. I am not prepared now to make any statement as to whether or not we claim that we come under the labor dispute or that we do not. I have had and my client has received no notice of any claims having been filed against or with respect to it by anyone or the basis of the claim or what determination has been made, if any. It has been given no reasons for the basis of any determination. It has received no reasonable notice of this hearing or any other hearing. It has been denied notice and rights accorded to it under the Statute, and the lack of notice constitutes a violation of due process of law.

Under the circumstances, I think any statement that I will give will have to depend upon what I might learn here. Also, I want to register the objections on the grounds I have already stated.

Referee Roden: You say three hundred claims have been filed?

Mr. Resner: Yes, three hundred claims of workers, members of this union, who last year worked for the Alaska Salmon Company. Now, we contend the Alaska Salmon Company did not intend to operate at all this year. In other words, they didn't intend to operate no matter what happened, and

there couldn't possibly be a labor dispute with the employes of the Alaska Salmon Company plants.

Referee Roden: What evidence have you to show they did not intend to operate?

Mr. Resner: Well, I have a letter here from the Alaska Salmon Company to that effect.

Referee Roden: Will you please file that?

Mr. Resner: I would like to read it and then I will file it. (Indicating).

Mr. Madison: I think at this time it would be well for me to say I am representing the Alaska Packers Association and Red Salmon Canning Company. That we have had no notice as to the extent or purpose of this hearing other than, that is, to give evidence under the question of this labor dispute. We understand Counsel for the moving party in this case, the union, intends to confine the *issued* of this case to the question as to whether or not a labor dispute has existed. [21] And if this is an appeal, as we understand from the one telegram we have received, then we have had no notice of appeal as provided in the Act.

And I simply want to make those matters a matter of record and voice my objection or objections to them so that I won't be deemed in proceeding with the hearing to waive any rights we may have in the premises.

Mr. Resner: That is why, Mr. Referee, I asked the question which I did at the outset trying to determine just what the status of the parties is? If you could give us that information it will be helpful?

Referee Roden: I will give you all the information I have. I don't know very much about it, myself. I happened to be in Seattle. Our Commission wired me at Seattle asking me if I could come down here and take the testimony upon this appeal, in which the question of a labor dispute was involved. That the Commission had turned down or rejected the claims filed by your clients because it came to the conclusion that a labor dispute existed.

That is all I know about it.

Mr. Resner: Thank you very much. Of course, we have already noted our objection, that the initial determination is not made according to the Statute.

Referee Roden: In what respect are you damaged?

Mr. Resner: Well, except that it puts the burden of proof upon us.

Referee Roden: Not necessarily so. That is a matter that will be decided later on. But somebody will have to commence here.

Let me ask, Mr. Madison, in what respect are you damaged if we proceed now and do not continue this hearing?

Mr. Madison: I don't know that I am damaged in any respect. It would depend entirely upon how the matter proceeds. I am perfectly willing to proceed at this time, so long as it is understood we are waiving no rights we may have to object later on.

Mr. Resner: Well, it is understood we are not.

Mr. Oliver: I am perfectly willing, too, on that same basis.

Referee Roden: Fine. We will give you Gentlemen all the opportunity you want to present your case. That is what we are here for. [22]

Mr. Resner: I would like first to have you note those Claimants who are or were last year employes of Red Salmon. I would like to have their names read into the record.

Referee Roden: Have you a list of them?

Mr. Resner: Yes. If we can file it later on?

Referee Roden: Is there any contention on the part of the Alaska Salmon Company that these three hundred people had no connections or had any connections with your Company? (Indicating)

Mr. Oliver: I don't know who the three hundred people are. I have had no opportunity to examine the register.

Referee Roden: If you get a list of them will you be kind enough to check them as soon as you can?

Mr. Resner: You will check the list against your payroll?

Mr. Oliver: Yes.

Mr. Resner: Well, with regard to these, we have these lists but they are not in proper form. We are going to have lists prepared and I will file them later on.

Referee Roden: Yes.

Mr. Resner: The letter is from the Alaska Salmon Company to Local No. 5, Alaska Cannery Workers Union, dated April 30, 1940.

Attention: Mr. Rendon.

“Dear Mr. Rendon:

“As your organization has been advised by the Alaska Salmon Industry, Inc., this company cannot make any expedition to Alaska out of San Francisco this season and accordingly will not have employment, or be able to ship any men on our steamers to our various canneries this year.”

There are other portions of the letter which are not relevant. This is the only copy which we have.

I would like to offer it for the record.

Mr. Madison: That was sent and received on the date it bears, was it not?

Mr. Resner: I can't say as to that. Approximately then, I suppose. The only date I have is one the letter bears, April 30, 1940.

Mr. Madison: If the letter is to be introduced in evidence I would like to know if it was sent and received the time the letter shows? [23]

Mr. Resner: Approximately the time it shows the letter was received.

Mr. Madison: Within a day or so? Sent in San Francisco and received in San Francisco?

Mr. Resner: That is right.

Mr. Resner: On April 26th the letter was received from the Alaska Salmon Industry to All the Unions Concerned, part of which reads as follows: “The Alaska Salmon Company will not undertake any expeditions out of San Francisco to Bristol Bay in 1940.”

That letter is signed by J. Paul St. Sure for the

Alaska Salmon Industry, Inc. That is the only portion. I would like to offer this letter (Indicating)

Referee Roden: Will you explain, Mr. Resner, who composes the Alaska Salmon Industry?

Mr. Resner: The Alaska Salmon Industry is composed of the Alaska Packers, Red Salmon Company, and the Alaska Salmon Company, I think, these gentlemen. (Indicating)

Mr. J. Paul St. Sure: Insofar as San Francisco is concerned the three operators in San Francisco are the three named by Mr. Resner. Alaska Salmon likewise comprises packers out of Portland, Seattle, and San Francisco.

Mr. Resner: Does the Commission desire to have the Officer of the Union who received these letters testify as to their receipt?

Referee Roden: Anybody object to admitting them in evidence?

Mr. Madison: No.

Mr. Resner: Then I don't think it is necessary.

Mr. Madison: No objection.

Mr. Resner: I want to turn now to the question of our contention there is not a labor dispute in active progress within the meaning of the Act, or any labor dispute at all because of the inability to arrive at an agreement.

I want to call as a witness Mr. Vincent Rendon.

MR. VINCENT RENDON,

1447 O'Farrell Street, San Francisco, being duly sworn testified as follows:

Direct Examination

By Mr. Resner: [24]

Q. Will you give us your name and address, please?

A. Vincent Rendon, 1447 O'Farrell Street, San Francisco.

Q. You are a member of Local No. 5, Alaska Cannery Workers Union?

A. Yes, Book No. 163.

Q. You were a member of the Negotiating Committee this year for San Francisco?

A. Yes.

Q. And also for Seattle? A. Yes.

Q. And how long have you been a member of the Union, Mr. Rendon?

A. Since 1936.

Q. You were on the Negotiating Committee last year?

A. Last year, and 1937, and 1936.

Q. Now, I want to direct your attention to the present Alaska season and ask you what the Union, Local No. 5, offered by way of a contract for the present season?

A. For the present season we gave them—that is in Seattle, March 6—to the Salmon Industry we give them our 1940 proposed contract; but Mr. Van Hoevenberg had refused to read our contract, and he was offering to us the 1939 of Seattle contract.

(Testimony of Vincent Rendon.)

By Referee Roden:

Q. He offered you the same terms as you had in 1939, did you say?

A. No, he offers the San Francisco Local the 1939 Seattle wages and conditions.

Q. He offered you the 1939 contract?

A. Yes, of Seattle.

By Mr. Resner:

Q. He offered the San Francisco Local, which is Local No. 5, the 1939 Seattle agreement?

A. Yes.

Mr. Resner: For the Referee's information I will state we will later show there is a difference between the 1939 Seattle agreement as applying to those shipping out of Seattle and the 1939 San Francisco agreement applying to the operations from San Francisco. And Mr. Rendon testifies the union in Seattle was offered by Mr. Van Hoevenberg, the San Francisco Local, was offered the 1939 Seattle agreement.

Is that correct, Mr. Rendon?

A. Yes. [25]

By Referee Roden:

Q. Who was that offered that? Mr. who?

A. Mr. Van Hoevenberg.

Q. Will you identify him?

A. Manager of the Canned Salmon Industry Ellsworth, and Van Hoevenberg.

Q. That is Ellsworth? A. Ellsworth.

(Testimony of Vincent Rendon.)

By Mr. Resner:

Q. And the date of that was when?

A. March 7th.

Q. In Seattle? A. In Seattle.

Q. And were negotiations continued after that time?

A. The negotiations. It seems to me that the Canned Salmon Industry they don't have no faith to have any negotiations because sometimes during the two months they have negotiations there is only 18 times we meet; and mostly one hour and a half or two hours. That is the mostly that they can spare time to ask to talk.

Q. Let me bring this back, Mr. Rendon. You say the union presented its 1940 contract?

A. Yes.

Q. And what happened to that contract so far as the packers are concerned?

A. They refused to read it.

Q. Did they hand it back to you or keep it?

A. They keep it but say there is no use to talk to us this because we cannot pay.

Q. Did you have any negotiations on your proposals in the 1940 agreement?

A. They just tell us to come back the next day and then the minute we come back the next day they say they don't have no time. And one day we was there they says they cannot talk no contract at all because they are going to get married, some of their daughters, and we says, "We will call you sometime."

Q. Where did this take place?

(Testimony of Vincent Rendon.)

A. That takes place in Seattle. And since that, we was waiting for three weeks since that date.

Q. From that day three weeks passed?

A. Three weeks passed. And then they tell us again, they say, "Well, we can spare you for two hours."

Q. And then you had another meeting in Seattle at that time?

A. And on that day they told us that they cannot pay more than 1939 of Seattle.

Q. The most they could pay was the 1939 Seattle wage scale? A. Yes.

Q. And what did the union ask for?

A. We were asking for 1940 or the 1939 of San Francisco wages and conditions. [26]

Q. Did the union make a definite offer to the operators to sign for the 1939 San Francisco wage scales? A. Yes, that is on May 29th.

Q. May 29th? A. Yes.

Q. You offered to sign for the San Francisco wage scale? A. Yes.

Q. For the operation from San Francisco?

A. From San Francisco.

Q. And that offer was made to whom?

A. To to the Canned Salmon Industry.

Q. Which representatives?

A. That is, there are 74 companies represented by Mr. Van Hoevenberg and Ellsworth.

Q. And where did that meeting take place?

A. In Dexter building.

Q. Seattle? A. Seattle.

(Testimony of Vincent Rendon.)

Mr. Resner: I want to offer into evidence at this time the 1939 San Francisco agreement and the 1939 Seattle agreement.

I assume you gentlemen have got copies?

Mr. Madison: May I see them, please?

Mr. Resner: I only have the one copy of each.
(Indicating)

There are certain portions of these agreements that I wanted to direct to the Commission's attention. I would like to note those at this time.

Mr. Madison: Are you offering those now?

Mr. Resner: We have no objection to those being introduced if we may have some opportunity of checking them during the day.

Mr. Resner: You want to check them for the purpose of comparison with your copies?

Mr. Madison: Yes.

Mr. Resner: That is all right, certainly.

CLAIMANTS' EXHIBIT No. 3-A

SEATTLE AGREEMENT

This Agreement, made and entered into between
....., a Corporation,
for its Cannery, the party of
the first part hereinafter referred to as the "Com-
pany", and the United Cannery Agricultural,
Packing & Allied Workers of America, C.I.O., in
behalf of Local No.....,
the part of the second part, and each and severally,
it is agreed:

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

WITNESSETH:

1. The Company agrees to recognize the Union as the exclusive and sole bargaining agent of all its employees engaged for Alaskan Salmon Cannery operations from the States of California, Oregon and Washington, for the 1939 season in the capacities herein listed and commonly termed "Cannery Labor." The Company shall procure all employees not residents of Alaska who come under the jurisdiction of the Union, through the Union headquarters or the Union hiring halls.

2. The Company shall not discriminate against any member for any Union activities, race, color, or creed, or for a law-suit or any legal action instituted because of dispute of contract.

3. In the event those employees selected as herein provided are not members of the Union, they shall be issued an official permit by the Union. At the time of departure for Alaska, such employees shall be either members of the Union or have received an official permit from the Union.

3-A. The Union shall furnish qualified foremen acceptable to the Company.

3-B. The Company shall at its option designate its foreman and representative who is a member of the Industry and who has no connection directly or indirectly with any labor contracting agency, and they will work with the Union's representatives in lining up of crews, based on preference being given

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

to those on the 1938 payrolls of the Company's cannery who are members of the Union in good standing, or worked on permits during the 1938 season.

3-C. In the event that said members of the Union or 1938 permit men so selected cannot be produced, or for any reason, do not elect to sign up within twenty-four hours prior to scheduled departure for Alaska, the Union shall furnish the necessary experienced men willing to go, then the Union shall furnish employees from the waiting lists of the Union.

4. The employees selected shall comply with all lawful orders of the Company or its representatives, and with all Company rules not inconsistent with this agreement and agree to work for the Company in the capacity designated or in any other capacity that the Company may require of the employees to and from, and in connection with the Company's salmon cannery operations in Alaska, to which such employee is assigned. The Company shall have the privilege to reject individual men of the 1938 employees who are unsatisfactory to the Company.

5. Except for willful violation of this agreement there shall be no lockouts, strikes or stoppage of work during the period of this agreement by the Company, any employee, group of employees or the Union.

5-A. Any disputes that cannot be settled at the

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

cannery are to be adjusted and settled after the season at port of embarkation of the expedition.

5-B. It is hereby understood that making any payment does not release the Company from liability if such liability exists.

6. Members of the Union shall not refuse to go through a picket line, unless such picket line is officially authorized by a legitimate labor organization affiliated with the Maritime Federation of the Pacific and approved by
Local #....., UCAPAWA-CIO in
....., and said Federation. Employees refusing to go through a jurisdictional picket line shall receive no pay or compensation while work is suspended.

7. The Company agrees to recognize one member of the crew of each cannery designated by the Union as the delegate or shop steward and agrees to pay such delegate \$25.00 per month above Class "A" scale of wages.

7-A. The Union claims certain definite rights and benefits in behalf of its membership as outlined in this agreement, and these rights shall be upheld by the authorized delegate; who shall act as the representative and spokesman of the Union, and in the event of a dispute or misunderstanding, he will be vested with the authority to settle to the best of his ability, all issues that may be brought to his attention. Further, a delegate is authorized and instructed that strict observance of all rules and

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

regulations, hours, wages and general conditions are to be observed. He shall endeavor at all times to settle all matters and issues in a satisfactory manner to all concerned.

8. It is expressly agreed that neither the Company nor its representatives, nor the Union or its representatives has the power or authority to change the provisions of this agreement.

9. The employees shall go on board any vessel designated by the Company when and where directed, and shall return to the port of embarkation upon any vessel designated by the Company when and where directed, unless the employee does not desire to return to the port of embarkation as directed, in which event the Company shall be relieved of all obligations to the employee for return transportation.

10. It is understood and agreed that before embarking, all employees shall submit at such time and place as the Company may designate, to a physical examination by a qualified physician, including those members requiring special certificates as food handlers, etc., no costs in connection with the examination and certificates shall be borne by the Union or its members.

10-A. Any employee covered by this agreement, who from injury sustained while at work for the Company through no fault of his own is prevented from working according to the judgment of a physician, is to continue to receive his respective pay

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

according to the agreement during the period of the injury; provided, however, that in the event the injury to any employee comes within the purview of the Workmen's Compensation Act for the Territory of Alaska, or any other compensation act, territorial, federal or state, the employee will receive the benefits specified in such applicable compensation act, and in addition thereto, such amount as will equal the difference between the compensation paid and the pay of such employee according to this agreement. Provided, further, that if the disability continues beyond the termination of the season, he shall receive thereafter only the amount to which he would be entitled under the Workmen's Compensation Act for the Territory of Alaska or any other compensation act applicable to his employment. The employee if and when injured shall report such injuries to the foreman in charge immediately at the time of the injury. Any such employee shall be entitled to medical and surgical attention and necessities without cost, in accordance with the requirements of the Workmen's Compensation Act for the Territory of Alaska or any other compensation act applicable to his employment.

10-B. Any employee covered by this agreement who is laid up because of sickness or natural ailments or an injury sustained outside the scope of his employment, and who is unable to work according to the judgment of a physician, shall be

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

paid his monthly wages and all other earnings up to the date so laid up, and shall thereafter be paid only the sum of \$50.00 per month from the date so laid up until able to work, or until placed in a hospital, or until transported to a place where hospital facilities are available, at which time the Company's liability shall cease. It shall be, however, the thorough understanding that in the case of sickness, or natural ailments, or an injury sustained outside the scope of his employment that the Company will not be liable for wages after the date the majority of the employees of such cannery have arrived at the port of embarkation. In the event of a dispute, the Superintendent will also make an effort to secure the opinion of another qualified physician. All employees so laid up through sickness, or natural ailments while engaged under this contract, shall receive medical and surgical attention and necessities without charge so long as they shall be entitled to payment of the \$50.00 per month under the terms of this section. This does not apply in cases of proven or obvious venereal diseases, intoxication, brawls or fights.

11. Medical, Dental and surgical services shall be furnished by the Company free of charge. Dental service shall consist of extractions and the treatment of infections resulting from said extractions.

11-A. In case of serious illness or accident, where no competent hospitalization or suitable

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

medical attention is immediately available, every feasible effort shall be used by the Company to transport the men to the nearest hospital.

12. Unless expedition is abandoned, any man who has been selected by the Company, has signed the Company's agreement and been accepted by the Company, and is discharged before leaving port of embarkation, unless so discharged for physical disability, drunkenness or any other legitimate cause, shall be paid \$75.00 as full compensation, said compensation to be paid within forty-eight (48) hours after such discharge.

13 If members are hired for a long job such as construction or purposes other than cannery work, the Company shall notify the Union before sailing.

14. School, Poll, Social Security and other taxes assessed against employees and payment of compensation insurance or hospitalization authorized by any Federal, State or Territorial law, shall be deducted by the employer from any wages due and the employer shall withhold any payments when required to do so by writ of garnishment or other legal proceedings or by valid assignments. Before acceptance the Company shall verify assignments with the individual employee.

14-B. Upon the discharge of any employee for just cause his wages shall terminate immediately and such employees should be housed and fed and returned to port of original embarkation.

14-C. In the event any employee refuses duty

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

or voluntarily quits his employment, his wages shall cease immediately and there shall be deducted from wages due him all costs of transportation North and South bound at prevailing passenger rates together with costs incurred by such employee at the cannery while waiting passage outbound from the cannery.

15. The Company guarantees each employee covered by this agreement hired outside the Territory of Alaska not less than two months' wages in accordance with the position as per classification, unless employee should be discharged or quits as herein provided.

16. On days of arrival or departure the hour 12 midnight shall be considered as the basis for the computation of the payroll. On days of arrival or departure one full day shall be paid irrespective of exact time of arrival or departure with regards to the hour of 12 midnight. Wages shall commence on the day of departure and terminate on the day of return to the port of dispatching, except as herein otherwise provided.

In the event that any employee does not elect to return to original port of embarkation upon a suitable vessel by and at the direction of the Company at the termination of the season, his employment shall be considered terminated and he shall be paid all wages due him within forty-eight (48) hours, subject to all provisions of this agreement, in which

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)
event the Company will be relieved of all obligations to the employee for return transportation.

17. The Company shall extend credit or make cash advances of a minimum of \$25.00 upon request as soon as practical after physical examination of employee with the written consent of the employee and the Union. Such advances however, shall not exceed twenty percent (20%) of the employee's estimated earnings for the period of employment, and such advances are to be refunded to the Company by the Union in case the employee does not arrive at the cannery to which the employee was dispatched by the Union. In addition thereto, the Company may at its option honor written allotments as earned by the employee for the benefit of his family or dependants. The Company may also allow credit to an employee for purchases made in Alaska at the Company's commissary against wages earned, but not in excess of 50% of the total season's wages may be deducted for such purchases. All articles displayed for sale to members of the Union shall be Union-made where available. The Company shall be entitled to deduct all such credits, cash advances and allotments paid before making any final payment to the employee. The Company shall not knowingly deduct from any wages due any amount for gambling debts incurred by the employee, or for narcotics, drugs, intoxicating liquor, or any employment fee, direct or indirect.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

18. It is agreed and provided that the sum of \$10.00 shall be made available to each employee, if due, not later than the day of arrival in home port and further provided that the Company shall pay directly to all employees all earnings due within forty-eight hours after arrival, holidays and Sundays excepted. Failure on the part of the Company to meet this requirement shall constitute a just claim by the employees to an additional pro-rata monthly or seasonal wage rate for each day of delay, including subsistence at \$3.00 per day.

19. If for the principal part of the actual canning season, an employee is assigned to an operation carrying with it a higher rate of wage than that for which he originally signed up, such higher rate of wage shall apply to his entire employment under this contract. If the Company shall within ten (10) days after the commencement of canning operations, determine that employee fails to properly perform the work for which signed up and shall assign such employee to a position carrying with it a lower rate of wage, such lower rate of wage shall apply only from time of demotion, and an appropriate adjustment shall be made accordingly when employee is paid off.

Members or workers signed for a definite classification and wage scale on embarkation, shall not be paid at any lower rate if they are required to perform general work before, after, or during the

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)
actual canning season, except as otherwise provided herein.

20. The Company shall furnish transportation from dispatching hall to North bound steamer's dock when employees sail in groups of ten men or more. On return if landed at a City other than that from which dispatched, then transportation shall be made available to the City from which dispatched. The Company shall also furnish employee free transportation, third-class, from point of embarkation to cannery and return, except as herein otherwise provided; three wholesome and adequate meals each day during transportation and while at the cannery; also suitable living quarters while at the cannery and bunk, spring and mattress, but employee shall furnish all his other bedding, clothing and personal effects, and excepting for its own negligence, the Company shall not be responsible for any damage to, or loss of, any of employee's bedding, clothing or personal effects from any cause whatsoever.

21. The Company agrees to provide a phonograph and forty-eight (48) assorted records for use at the cannery by employees covered by this agreement.

22. Employees whose work is such that it has been the custom to necessitate the use of oil skins, oil skin aprons, boots, sleeve guard or gloves, shall be supplied free of charge with these necessities. Lye wash and Retort men are to be supplied with

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

leather palm gloves. Such equipment shall be returned to the Company at the Superintendent's discretion. Rubber boots and other equipment referred to above shall be kept hygienic and sanitary by employees using same.

23. No employee shall be required to work where hazardous or unsafe conditions exist.

24. A suitable number of fire extinguishers shall be placed at strategic points in cannery plants.

25. Cooks required by the Company to make vessels shipshape, check vessel supplies, or prepare meals before ship sails for cannery, shall be paid for each day and hour at the regular per day rate, but not less than four (4) hours shall be paid whether the work lasts that long or not.

26. Required number of supervisory personnel.

Canneries employing less than 60 men, 1 First Foreman.

Canneries employing 60 men or more, 1 First Foreman & 2nd Foreman.

27. All time worked in excess of the hours herein provided shall be paid at the regular overtime rate for cannery work.

27-A. Forty-eight (48) hours of work shall constitute a week's work, except mess house crew. If the forty-eight (48) hours have not been worked during the week, they shall not be required to make it up in the succeeding week.

27-B. Before and after the actual canning season Sunday shall be the recognized day of rest each

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)
week. During the actual canning season Monday shall be deemed the day of rest in addition to all recognized holidays and all work performed on these days shall be paid at the applicable extra compensation rate agreed herein.

28. The following rates of compensation shall apply in the respective classifications of employment and districts.

BRISTOL BAY

Foremen	1st Foreman	2nd Foreman
1 and 2 line canneries.....	\$975.00 per season	\$625.00
3 line canneries.....	1025.00 “ “	650.00
4 line canneries.....	1075.00 “ “	675.00
5 line canneries.....	1125.00 “ “	700.00

For each additional line over 5 lines, first foremen shall receive \$50.00 additional and second foremen \$25.00 additional per line.

First and second foremen shall not be entitled to any overtime pay.

Cooks

First Cook for Cannery Workers

Regularly serving over 60 men.....	\$177.50 per month
Regularly serving from 30 to 60 men.....	157.50 “ “
Regularly serving less than 30 men.....	142.50 “ “
Second Cook (If employed).....	137.50 “ “
Kitchen Help, Waiters & Dishwashers..	97.50 “ “
Bull Cook (where more than 40 cannery workers employed)	97.50 “ “

Baker (If employed) \$25.00 less than respective First Cook.

The mess house crew shall prepare and serve the three regular meals each day. During the canning season if coffee is served at other than regular

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

meal hours, the mess house crew shall prepare same without overtime. If at midnight, the Cook is required to prepare and serve an additional full hot meal for members of the crew working at night, he shall receive three (3) hours' overtime. If coffee is served at 9 P. M. for men working in the cannery up to 9 P. M. or later, one hour overtime shall be allowed to not more than two men from the mess house crew. These two men to be designated by the head man of the mess house crew. Where it does not interfere with the operation of the cannery, the mess house may arrange amongst themselves for one day off in each seven days.

Cannery Workers

Classification "A"	\$100.00
Classification "B"	90.00

For cannery workers eight (8) hours from 8 A. M. to 5 P. M., shall constitute a day's work before and after the canning season. During the canning season eight (8) hours shall constitute a day's work in a spread of nine (9) hours starting from 7 A. M., but not later than 8 A. M. It is understood that the foreman shall make necessary adjustment in working time between those hours for any crew in case such crew, on the foremen's order starts working after 7 A. M. The working time for any crew to be eight hours from start of work before entitled to overtime. Overtime will be paid at the rate of sixty-five cents (65c) per hour.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

Longshore work shall be paid for at the rate of \$1.00 per hour.

Head Lye Wash, Head Butcher and Head Warehouseman (if used) \$125.00.

FOR WESTWARD ALASKA OR COOK INLET DISTRICTS
AND CHIGNIK, KARLUK AND ALITAK CANNERIES

Foremen	1st Foreman per season	2nd Foreman per season (If employed)
Canneries with 1 line (except in canneries where not customarily used)	\$925.00	\$575.00
Canneries with 2 lines.....	975.00	600.00
Canneries with 3 lines.....	1000.00	625.00
Canneries with 4 lines.....	1050.00	650.00
Canneries with 5 lines.....	1100.00	675.00

First and Second Foreman shall not be entitled to overtime pay.

Cooks

First Cook for Cannery Workers

Regularly serving more than 60 men.....\$175.00 per mo.

Regularly serving from 30 to 60 men..... 155.00 “ “

Regularly serving less than 30 men..... 140.00 “ “

Second Cook (If employed)..... 130.00 “ “

Kitchen Help, Waiters & Dishwashers..... 95.00 “ “

Bull Cook (where more than 40 cannery workers employed) 95.00 “ “

Baker (If employed) \$25.00 less than respective First Cook.

The mess house crew shall prepare and serve the three regular meals each day. During the canning season if coffee is served at other than regular meal hours, the mess house crew shall prepare same without overtime. If at midnight, the cook is required to prepare and serve an additional full hot meal for members of the crew working at night,

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

he shall receive three (3) hours' overtime. If coffee is served at 9 P. M. for men working in the cannery up to 9 P. M. or later, one hour overtime shall be allowed to not more than two men from the mess house crew. These two men to be designated by the head man of the mess house crew. Where it does not interfere with the operation of the cannery, the mess house crew may arrange amongst themselves for one day off in each seven days.

Cannery Workers

Classification "A"\$93.00 per month

Classification "B" 85.00 per month

For cannery workers eight (8) hours from 8 A. M. to 5 P. M., shall constitute a day's work before and after the canning season. During the canning season eight (8) hours shall constitute a day's work in a spread of nine (9) hours starting from 7 A. M., but not later than 8 A. M. It is understood that the foreman shall make necessary adjustment in working time between those hours for any crew in case such crew, on the foreman's order starts working after 7 A. M. The working time for any crew to be eight (8) hours from start of work before entitled to overtime. Overtime will be paid at the rate of sixty-two and one-half cents (62½c) per hour.

Longshore work shall be paid for at the rate of eighty cents (80c) per hour.

Head Lye Wash, Head Butcher and Head Warehouseman (If used) \$120.00.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

BALANCE OF KODIAK ISLAND, COPPER RIVER &
PRINCE WILLIAM SOUND AND SOUTHEASTERN
ALASKA.

Foreman	1st Foreman per season	2nd Foreman per season (If employed)
Canneries with 1 line (except in can- neries where not customarily used)	\$875.00	\$500.00
Canneries with 2 lines.....	950.00	600.00
Canneries with 3 lines or more.....	1100.00	625.00
First and Second Foremen shall not be entitled to over- time pay.		

Cooks

First Cook for Cannery Workers

Regularly serving more than 60 men.....	\$160.00 per month		
Regularly serving from 30 to 60 men.....	145.00	“	“
Regularly serving less than 30 men.....	135.00	“	“
Second Cook (If employed).....	125.00	“	“
Kitchen Help, Waiters & Dishwashers..	95.00	“	“
Bull Cook (Where more than 40 can- nery workers employed).....	95.00	“	“

Baker (If employed) \$25.00 less than respective First Cook.

The mess house crew shall prepare and serve the three regular meals each day. During the canning season if coffee is served at other than regular meal hours, the mess house crew shall prepare same without overtime. If at midnight, the cook is required to prepare and serve an additional full hot meal for members of the crew working at night, he shall receive three (3) hours' overtime. Where it does not interfere with the operation of the cannery, the mess house crew may arrange amongst themselves for one day off in each seven days.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

Cannery Workers

Classification "A".....\$90.00 per month

Classification "B".....\$80.00 per month

For cannery workers eight (8) hours from 8 A. M. to 5 P. M. shall constitute a day's work before and after the canning season. During the canning season eight (8) hours shall constitute a day's work in a spread of nine (9) hours starting from 7 A. M., but not later than 8 A. M. It is understood that the foreman shall make necessary adjustments in working time between those hours for any crew in case such crew, on the foreman's order starts work after 7 A. M. The working time for any crew to be eight (8) hours from start of work before entitled to overtime. Overtime will be paid at the rate of sixty cents (60c) per hour.

Longshore work shall be paid for at the rate of eighty cents (80c) per hour.

Head Lye Wash, Head Butcher and Head Warehouseman (if used) \$115.00.

29. The following cannery workers classification and capacities are those referred to in Section 28. In the event any classification is not specified or is known by other names, or new classifications are to be added, wages, and benefits and the definite classifications shall be agreed upon and supplemented to this agreement and made retroactive to the leaving and return of expedition.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

A

Pitchers & Sluicers (where employed)

Scow Men, Hook Fish

Sorters

Fish House Bins

Elevator in Fish House

Filler Hopper Man

Hand Labeling Crew (where hired as such)

Men wiring and stitching boxes

Fish Inspector

Can Tester

Casing Machine Operator

Iron Chink Feeders & Butchers

Catching Cans on line by hand

Slimers

Gang Knives (where used)

Filler Feeders

Operator of Cooler Loader

Retort & Lye Wash Men

Men regularly supplying coolers to line

Labeling Machine Operator (where used permanently)

Wooden Box Maker & Nailer

Box Pilers (where hired as such)

B

Men supplying coolers to line

Patching Table

Reform Feeder

Clincher, Vacuum Machine & Salter Men

Catching and Piling Cans & empty Boxes

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

Warehouse Crew

General Can Loft Work

Other General Cannery Work

30. All work involving the handling of cargo moving directly to a ship's tackle or scows from the last point of rest on the dock or in the warehouse or all cargo moving from the ship's tackle or scows to the first point of rest on the dock or in the warehouse, shall be considered longshore work and be paid for at the scale agreed herein.

31. Construction of buildings or appurtenances, razing of buildings or repair, ditch digging, clearing land, shall be classed as miscellaneous work and paid for at the rate of 75c per hour, regardless of the time such work is performed. All other work except longshore work, not specifically mentioned herein shall be performed during the regular work day without extra compensation.

32. When actual overtime worked is less than one-half hour, one-half hour shall be paid. When overtime exceeds one hour, payment will be allowed on actual time worked but not less than one-half hour periods.

33. In the event that the cannery is destroyed, or so greatly damaged from any cause or the laws, rules or regulations with reference to salmon fishing or canning be changed, or that in the Company's judgment, because of strikes or for any reason, it would be impossible or unprofitable to continue operations, the Company shall comply with

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

Section 15 and may terminate this agreement excepting that the Company shall return each employee covered by this agreement to the point where hired at its expense and pay him until such return, unless employee should elect to remain in Alaska, in which event his employment shall terminate at the cannery.

34. The Union shall not interfere with the performance of work outside of the general scope of this agreement, provided such work is customary in the Salmon Industry in the particular locality, and is arranged for with the other employees by the employer on mutually satisfactory terms and conditions, nor shall the Union or its members interfere with the performance of any work by other employees, provided it is customary in particular localities to employ other employees to perform such work.

35. Provision shall be made to keep the general crew quarters clean, make fires when necessary, and to keep said quarters in a sanitary condition. All canneries shall have good clean shower baths, laundry room and suitable clothes drying facilities.

36. When emergency requires, work necessary for safety of vessels or any other Company property, shall be done at any and all times without extra compensation.

37. Sufficient copies of this agreement shall be posted in a conspicuous place in the canneries.

38. Suitable records of overtime and other work

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

for which extra pay is allowed shall be kept in triplicate and compared and approved daily the the employee, Company timekeeper, Foreman and Delegate and one copy furnished to delegate.

39. Where cemeteries are located, a suitable time, preferably Memorial Day shall be agreed upon and cleaning of plots, fences, painting of headboards, etc., shall be done by a detail of not to exceed five men under the supervision of the delegate.

Holidays to be observed are: Memorial Day, Independence Day and Labor Day.

If work is done on holidays, overtime shall be paid at the overtime rate. One day out of each week of seven days, which day shall be Sunday prior to and after the fishing season and Monday during the fishing season, shall be deemed a normal day of rest, and if employee shall be required to work on such days, he shall perform such work, but all work so performed shall be construed to be overtime and shall be paid for at the overtime rate. There shall be at least eight (8) hours of rest in each twenty-four (24) hour period, unless employee elects to work during such rest period.

40. The parties hereto, hereby, waive the provisions of Chapter 45 of the Session Laws of the Territory of Alaska for the year 1925 and all amendments thereof, and Acts supplemental thereto, and agree that the payment of wages and other compensation referred to in this contract shall be in accordance with the provisions of this agree-

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)
ment and without regard to the requirements of said Act.

41. The employee also agrees that he will not take on board vessel, or have in his possession at the cannery, any intoxicating liquor or narcotics and that should any intoxicating liquor or narcotics be found in his possession, the Company shall have the right to destroy the same. The employee agrees to allow his baggage to be searched. Employee also agrees not to smoke in the warehouse, box factory or any place where smoking is prohibited nor to become intoxicated, nor to engage in brawls or fights, or to gamble at any time either on board the vessel or in Alaska.

42. This agreement shall be effective for the 1939 season. It is further agreed that in the event either party should desire to modify, change, or terminate, such conditions or practices at the expiration of the 1939 season, written notice must be given on or before February 1, 1940, and that if special notice is not given within such time by either party, the same conditions and practices shall be automatically considered as renewed for an additional period of one year.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

Dated.....

uopwa-34

..... Company

By

UNITED CANNERY AGRICULTURAL PACKING AND ALLIED WORKERS OF AMERICA

.....
.....

CLAIMANTS' EXHIBIT No. 3-B

1939—

AGREEMENT WITH UNITED CANNERY, AGRICULTURAL PACKING AND ALLIED WORKERS OF AMERICA

This agreement, made and entered into between
-----, a Corporation, for their Alaska canneries, the party of the first part hereinafter referred to as the "Company" and the United Cannery Agricultural Packing & Allied Workers of America, C.I.O, in behalf of the Alaska Cannery Workers' Union, Local No. 5, the party of the second part, and each and severally, it is agreed:

WITNESSETH:

1. The Company agrees to recognize the Union

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)
as the exclusive and sole bargaining agent of all its employees engaged for Alaska Salmon Cannery operations from the States of California, Oregon and Washington, for the 1939 season in the capacities herein listed and commonly termed "Cannery Labor." The Company shall procure all employees not residents of Alaska who come under the jurisdiction of the Union, through the Union headquarters or the Union hiring halls.

2. The Company shall not discriminate against any member for any Union activities, race, color or creed, or for a law-suit or any legal action instituted because of dispute of contract.

3. In the event those employees selected as herein provided are not members of the Union, they shall be issued an official permit by the Union. At the time of departure for Alaska, such employees shall be either members of the Union or have received an official permit from the Union.

4. Any disputes that cannot be settled at the cannery are to be adjusted and settled after the season at port of embarkation of the expedition. Under no circumstances will Superintendents or agents of the Company be compelled to sign any disputed wage claim.

(a) It is hereby understood that making any payment does not release the Company from liability if such liability exists.

5. No member will be required to pass through a picket line established by Organized Labor, nor

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

work where armed guards are employed during a dispute. A refusal to do so will not be considered a violation of this agreement.

6. The Company agrees to recognize not more than two members of the crew of each cannery designated by the Union as the delegate or shop steward and agrees to pay one such delegate \$25.00 per month above Class "A" scale of wages at each cannery.

(a) The Union claims certain definite rights and benefits in behalf of its membership as outlined in this agreement, and these rights shall be upheld by the authorized delegate; who shall act as representative and spokesman of the Union, and in the event of a dispute or misunderstanding, he will be vested with the authority to settle to the best of his ability, all issues that may be brought to his attention. Further, a delegate is authorized and instructed that strict observance of all rules and regulations, hours, wages and general conditions are to be observed. He shall endeavor at all times to settle all matters and issues in a satisfactory manner to all concerned.

7. It is expressly agreed that neither the Company or its representatives nor the Union or its representatives has the power or authority to change the provisions of this agreement.

8. The employees shall go on board any vessel designated by the Company when and where directed, and shall return to the port of embarkation upon

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

any vessel designated by the Company when and where directed, unless the employee does not desire to return to the port of embarkation as directed, in which event the Company shall be relieved of all obligations to the employee for return transportation.

9. It is understood and agreed that before embarking, all employees shall submit at such time and place as the Company made designate, to a physical examination by a qualified physician, including those members requiring special certificates as food handlers, etc., no costs in connection with the examination and certificates shall be borne by the Union or its members.

(a) Where members are required to submit to a physical examination same shall be done in a dignified manner, with regard to the method used.

(b) Members shall not be required to undress or drop their pants in areas exposed to public gaze. Companies shall be responsible for suitable arrangements.

(c) Any employee covered by this agreement, who from injury sustained while at work for the Company through no fault of his own is prevented from working according to the judgment of a physician, is to continue to receive his respective pay according to the agreement during the period of the injury; provided, however, that in the event the injury to any employee comes within the purview of the Workmen's Compensation Act for the Terri-

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

tory of Alaska, or any other compensation act, territorial, federal or state, the employee will receive the benefits specified in such applicable compensation act, and in addition thereto, such amount as will equal the difference between the compensation paid and the pay of such employee according to this agreement. Provided, further, that if the disability continues beyond the termination of the season, he shall receive thereafter only the amount to which he would be entitled under the Workmen's Compensation Act for the Territory of Alaska or any other compensation act applicable to his employment. The employee if and when injured shall report such injuries to the foreman in charge immediately at the time of the injury. Any such employee shall be entitled to medical and surgical attention and necessities without cost, in accordance with the requirements of the Workmen's Compensation Act for the Territory of Alaska or any other compensation act applicable to his employment.

(d) Any employee covered by this agreement who is laid up because of sickness or natural ailments or an injury sustained outside the scope of his employment, and who is unable to work according to the judgment of a physician, shall be paid his monthly wages and all other earnings up to the date so laid up, and shall thereafter be paid only the sum of \$50.00 per month from the date so laid up until able to work, or until placed in a hospital, or until transported to a place where hospital facilities are available, at which time the Company's

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

liability shall cease. It shall be, however, the thorough understanding that in the case of sickness or natural ailments, or an injury sustained outside the scope of his employment that the Company will not be liable for wages after the date the majority of the employees of such cannery have arrived at the port of embarkation. In the event of a dispute, the Superintendent will also make an effort to secure the opinion of another qualified physician. All employees so laid up through sickness, or natural ailments while engaged under this contract, shall receive medical and surgical attention and necessities without charge so long as they shall be entitled to payment of the \$50.00 per month under the terms of this action. This does not apply in cases of proven or obvious venereal diseases, intoxication, brawls or fights.

10. Medical, Dental, Surgical and nursing services shall be furnished by the Company free of charge, except in cases of proven or obvious venereal diseases, intoxication, brawls, or fights. Dental service shall consist of extractions and the treatment of infections resulting from said extractions. First aid kits, equipment, and stretchers shall be available on vessels and in canneries.

(a) In case of serious illness or accident, where no competent hospitalization or suitable medical attention is immediately available, every feasible effort shall be used by the Company to transport the men to the nearest hospital.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

(b) All physicians, wherever employed shall be recognized, qualified licensed practitioners and nurses certified First Aid Men.

11. Unless expedition is abandoned, any man who has signed the Company's agreement and been accepted by the Company, and is discharged for physical disability, drunkenness, or any other legitimate cause, shall be paid \$75.00 in full compensation, said compensation to be paid within forty-eight (48) hours after such discharge. The Union reserves the right to furnish Doctors for the purpose of examination where rejection has been made.

12. If members are hired for a long job such as Construction or purposes other than cannery work, the Company shall notify the Union before sailing.

(a) School, Poll, Social Security and other taxes assessed against employees and payment of compensation insurance or hospitalization authorized by any Federal, State or Territorial Law, shall be deducted by the employer from any wages due and the employer shall withhold any payments when required to do so by writ of garnishment or other legal proceedings or by valid assignments. Before acceptance the Company shall verify assignments with the individual employee.

(b) During the course of the season, men or members with families dependent upon them, shall receive advances.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

1. First foreman with dependents, shall be given \$75.00 a month.

2. Second foreman with dependents, shall be given \$50.00 a month.

3. Cooks and Bakers with dependents, shall be given \$50.00 a month.

4. Members with dependents, shall be given \$35.00 a month.

5. Members shall be given an advance of \$5.00 on boats.

The allowance shall be paid twelve (12) days after sailing to Alaska and every thirty (30) days thereafter.

13. In the event any employee refuses duty or voluntarily quits his employment, his wages shall cease immediately.

14. The Company guarantees each employee covered by this agreement hired outside the Territory of Alaska, not less than two months wages in accordance with the position as per classification, unless employee should be discharged or quits as herein provided.

15. On days of arrival or departure the hour twelve (12) midnight shall be considered the basis for the computation of the payroll. On days of arrival or departure one full day shall be paid irrespective of exact time of arrival or departure with regards to the hour of 12 midnight. Wages shall commence on the day of departure and terminate on

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

the day of return to the port of dispatching, except as herein otherwise provided.

In the event that any employee does not elect to return to original port of embarkation upon a suitable vessel by and at the direction of the Company at the termination of the season, his employment shall be considered terminated and he shall be paid all wages due him within forty-eight (48) hours, subject to all provisions of this agreement, in which event the Company will be relieved of all obligations to the employee for return transportation.

16. It is agreed and provided that the sum of \$10.00 shall be made available to each employee, if due, not later than the day of arrival in home port and further provided that the Company shall pay directly to all employees all earnings due within forty-eight (48) hours after arrival, holidays and Sundays excepted. Failure on the part of the Company to meet this requirement shall constitute a just claim by the employees to an additional pro-rata monthly or seasonal wage rate for each day of delay, including subsistence at \$3.00 per day.

17. Members or men signed up for a definite classification and wage scale on embarkation shall not be paid any lower rate if they are required to perform general work before, during or after cannery season unless they prove incompetent in the opinion of the cannery workers' foreman and the cannery superintendent. In that event they may be reduced to a lower classification of pay and a

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

man from a lower classification can be elevated and receive the pay designated for a worker demoted.

18. The Company agrees to provide a phonograph and forty-eight (48) assorted records for use at the cannery by employees covered by this agreement.

19. Employees whose work is such that it has been the custom to necessitate the use of oil skins, oil skin aprons, boots, sleeve guards or gloves, shall be supplied free of charge with these necessities. Lye wash and retort men are to be supplied leather gloves. Such equipment shall be returned to the Company at the Superintendent's discretion. Rubber boots and other equipment referred to above shall be kept hygienic and sanitary by employees using same.

20. No employee shall be required to work where hazardous or unsafe conditions exist.

21. A suitable number of fire extinguishers shall be placed at strategic points in cannery plants.

22. Cooks required by the Company to make vessels shipshape, check vessel supplies, or prepare meals before ship sails for cannery shall be paid for each day and hour at the regular per day rate, but not less than four (4) hours shall be paid whether the work lasts that long or not.

23. All time worked in excess of the hours herein provided shall be paid at the regular overtime rate for cannery work.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

(a) Forty-eight (48) hours of work shall constitute a week's work. If the forty-eight (48) hours have not been worked during the week, they shall not be required to make it up in the succeeding week.

(b) Before and after the actual canning season Sunday shall be the recognized day of rest each week. During the actual canning season Monday shall be deemed the day of rest, in addition to all recognized holidays and all work performed on these days shall be paid at the applicable extra compensation rate agreed herein.

24. The following rate of compensation shall apply in the respective classifications of employment and districts.

BRISTOL BAY

Foremen	1st Foreman Per Season	2nd Foreman Per Season
1 and 2 line canneries.....	\$ 900.00	\$625.00
3 lines	925.00	650.00
4 lines	1,000.00	675.00
5 lines	1,050.00	700.00

If their services are satisfactory, in lieu of over-time, First Foreman shall receive 15% and Second Foreman shall receive 10% of season's earnings.

Cooks

First Cook	\$175.00 per month		
Second Cook	125.00	“	“
Cook's Helper at Diamond U Cannery only	110.00	“	“
First Baker	150.00	“	“
Second Baker	125.00	“	“
Cooks Helper, disherwashers, waiters	85.00	“	“

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

Any eight hours out of twelve (12) shall constitute a day's work.

Any time over eight (8) hours shall be considered overtime. Men can be started as required.

The overtime rate for all kitchen help shall be at the rate of ninety cents (90c) per hour, including Sundays and Holidays.

Cannery Workers

Classification "A"	\$100.00 per month
Classification "B"	90.00 " "

For cannery workers (8) hours from 8:00 A.M. to 5:00 P.M. shall constitute a day's work before, during and after the canning season. Any part of crew may be started before balance of crew.

Overtime shall be paid for at the rate of sixty-five cents (65c) per hour.

Longshore work shall be paid for at the rate of \$1.00 per hour.

FOR WESTWARD ALASKA OR COOK INLET DISTRICTS
AND CHIGNIK, KARLUK AND ALITAK CANNERIES

Foremen	1st Foreman Per Season	2nd Foreman Per Season
1 and 2 line canneries.....	\$1,050.00	\$725.00
3 lines	1,075.00	750.00
4 lines	1,100.00	775.00
5 lines	1,125.00	800.00

If their services are satisfactory, in lieu of overtime, First Foreman shall receive 15% and Second Foreman shall receive 10% of season's earnings.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

Cannery Workers

Classification "A"\$100.00 per month

Classification "B" 90.00 " "

For cannery workers eight (8) hours from 8:00 A.M. to 5:00 P.M. shall constitute a day's work before, during and after the canning season. Any part of crew may be started before balance of crew.

Overtime shall be paid for at the rate of sixty-five cents (65c) per hour.

Same wages shall be paid in Western Alaska as in the Bristol Bay Area.

Longshore work shall be paid for at the rate of \$1.00 per hour.

25. The following cannery workers classifications and capacities are those referred to in Section 24. In the event any classification is not specified or is known by other names, or new classifications are to be added, wages and benefits and the definite classification shall be agreed upon and supplemented to this agreement and made retroactive to the leaving and return of expedition.

A

B

Can Pilers

Patching Table

Pitchers and Sluicers

Reform Feeder

Scow Men, Hook Fish

Clincher, Vacuum

Sorters

Machine & Salt Men

Fish House Bins

Catching and Piling,

Elevator in Fish House

Empty Cans & Boxes

Filler Hopper Man

Warehouse Crew

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

A—(Continued)

B—(Continued)

Hand Labeling Crew,

General Can loft work

where hired as such

Other General Cannery

Men wiring & Stitching

Work

boxes

Janitors

Fish Inspector

Can Tester

Caseing Machine Operator

Iron Chink Feeders and

Butchers

Catching cans on line by hand

Slimers

Gang knives, where used

Filler feeders

Operator of cooler load-

ers

Retort & lye wash men

Men regularly supplying

coolers to line

Labeling Machine Oper-

ator, where used per-
manently.

Wooden Box Maker &

Nailer

Full Box Pilers, where

hired as such

Solderers & Tin Cutters

Jitney Driver in cannery

Slitter, Machine feeders

& Relief men

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

26. All work involving the handling of cargo moving directly to a ship's tackle or scows from the last point of rest on the dock or in the warehouse or all cargo moving from the ship's tackle or scows to the first point of rest on the dock or in the warehouse, shall be considered longshore work and be paid for at the scale agreed herein.

27. Construction of buildings or appurtenances, razing of buildings or repair, ditch digging, clearing land, shall be classed as miscellaneous work and paid for at the rate of 75c per hour, regardless of the time such work is performed. All other work, except longshore work, not specifically mentioned herein shall be performed during the regular work day without extra compensation.

28. When actual overtime worked is less than one-half hour, one-half hour shall be paid. When overtime exceeds one hour, payment will be allowed on actual time worked but not less than one-half hour periods.

29. In the event that the cannery is destroyed, or so greatly damaged from any cause or the laws, rules or regulations with reference to salmon fishing or canning be changed, or that in the Company's judgment, because of strikes or for any reason, it would be impossible or unprofitable to continue operations, the Company shall comply with Section 14 and may terminate this agreement excepting that the Company shall return each employee covered by this agreement to the point where hired at its

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)
expense and pay him until such return, unless employee should elect to remain in Alaska, in which event his employment shall terminate at the cannery.

30. Provision shall be made to keep the general crew quarters clean, make fires when necessary, and to keep said quarters in a sanitary condition. All canneries shall have good clean shower baths, laundry room and suitable clothes drying facilities.

31. (a) All meals shall be served in crockery-ware, wherever possible, whether on vessels or in canneries, and knife, fork and spoons shall be supplied. Replacements of enamel ware shall be made for the 1939 season with crockery-ware on all vessels and in all canneries.

(b) All meals shall be served in American style and standard, but this section does not preclude the use of foreign foods when required.

(c) While vessels are enroute breakfast, lunch, and dinner shall be served.

(d) Meals shall be served in the following manner: Breakfast at 7:00 A.M. and at each five hour period on the completion of that meal, during actual canning season and at 4-hour intervals before and after actual canning season.

(e) If men are worked more than 5 hours without a meal, they shall be paid a penalty of time and one-half of the prevailing rate as the case may be, except in cases of breakdown of ranges or other cases where the Company may not be at fault.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

(f) No less than 60 minutes shall be allowed for each meal, before and after actual canning season. During the actual canning season, thirty minutes may be taken.

(g) Sufficient food of a diversified character shall be furnished and wholesome meals of good quality and sufficient quantity shall be available at all meals.

(h) Proposed menu to be agreed upon and made a supplement to this agreement.

32. Sufficient copies of this agreement shall be posted in conspicuous places in the canneries.

33. Where cemeteries are located, a suitable time, preferably Memorial Day shall be agreed upon and cleaning of plots, fences, painting of headboards, etc., shall be done by a detail of not to exceed five men under the supervision of the delegate.

Holidays to be observed are:

Memorial Day

Independence Day

Labor Day

If work is done on holidays, overtime shall be paid at the overtime rate. One day out of each week or seven days, which day shall be Sunday prior to and after the fishing season and Monday during the fishing season, shall be deemed a normal day of rest, and if employee shall be required to work on such days, he shall perform such work, but all work so performed shall be construed to be overtime and shall be paid for at the overtime rate. There shall be at least eight (8) hours of rest in each twenty-

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

four (24) hour period, unless employee elects to work during such rest period.

34. Suitable records of overtime and other work for which extra pay is allowed shall be kept in triplicate and compared and approved daily by the employee, Company timekeeper, Foreman and Delegate and one copy furnished to delegate.

35. The parties hereto, hereby, waive the provisions of Chapter 45 of the Session Laws of the Territory of Alaska for the year 1925 and all amendments thereof, and Acts supplemental thereto, and agree that the payment of wages and other compensation referred to in this contract, shall be in accordance with the provisions of this agreement and without regard to the requirements of said Act.

36. (a) Employee also agrees not to smoke in warehouse, box factory or any place where smoking is prohibited nor to become intoxicated, nor to engage in brawls or fights, nor to gamble at any time either on board vessel or in Alaska.

(b) The policy of the Union is unalterably opposed to gambling in any form, and the sale and use of dope or excessive use of intoxicating liquors. Foremen are pledged to cooperate with delegates in eliminating the above mentioned vices, and the Company will lend its full support to the abolition in every instance.

37. This agreement shall be effective for the 1939 season. It is further agreed that in the event either party should desire to modify, change, or terminate,

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

such conditions or practices at the expiration of the 1939 season, written notice must be given on or before February First, 1940, and that if special notice is not given within such time by either party, the same conditions and practices shall be automatically considered as renewed for an additional period of one year.

Dated

Company:

Union:

By

.....

uopwa-34

The wage scale for the season at Bristol Bay is the same for cannery workers whether they ship from Seattle or San Francisco, but the wage scale for operations to Chignik, Karluk, Alatek, and Cook Inlet are different. The 1939 Seattle agreement provides for cannery workers, Classification A, \$90.00 per month, and cannery workers of Classification B, \$80.00 per month. The San Francisco agreement in 1939 provided for cannery workers to the same operations of Classification A, \$100.00 a month or ten dollars more, and Classification B, \$90.00 a month. [27]

(Testimony of Vincent Rendon.)

With respect to foremen—I won't read these, but I want to direct the Commission's attention to page five of the San Francisco agreement listing the wage scales for foremen, and to page 7 of the Seattle agreement containing the wage scale for foremen in Seattle—scales being lower.

I also want to direct the Commission's attention to the same page 5 of the San Francisco agreement containing the wages for Cooks and Cooks Helpers and Bakers; to page 7 of the Seattle agreement where the wage scales appear for Cooks and Bakers—and the wage scales there are also lower.

These wage scales can be determined by comparison of these two agreements, and it won't be necessary for me to identify them any other than that, I don't think.

I also want to point out with respect to certain conditions that exist in the San Francisco and Seattle operations, which will appear by the reading of the two agreements.

By Mr. Resner:

Q. Well, as I understand it, you offered the San Francisco agreement and that was rejected?

A. (Mr. Rendon) Yes.

Q. What was the position of the union with respect to these Claimants? Today, with respect to these operations in Alaska, are they willing to go to work? and, if so, under what conditions?

A. Through our membership I can say until the present time our members are willing to go for 1939 wages and conditions of San Francisco. And that

(Testimony of Vincent Rendon.)

is the offers we give to the Canned Salmon Industry to the last, May 29th.

By Referee Roden:

Q. When did you say you made that offer?

A. May 29th.

By Mr. Resner:

Q. That was for the season commencing when?

A. Commencing of this season, of 1940.

Q. I know, but when did the operations start up there?

A. That depends sometimes to the companies when they open—sometimes June and sometimes May, I don't know exactly when was the definite date.

Q. Mr. Resner: I think those are all the questions I have to ask Mr. Rendon. If any of you gentlemen have any you can ask at this time? [28]

Cross Examination

By Mr. Madison:

Q. I would like to ask a question or two, Mr. Rendon. You say you offered to sign on the San Francisco wage scale on May 29th? A. Yes.

Q. To whom did you make that offer?

A. To Van Hoevenberg.

Q. You made that offer to Mr. Van Hoevenberg in Seattle? A. In Seattle.

Q. Did you conduct all the negotiations with regard to the cannery workers contract in Seattle with Mr. Van Hoevenberg?

A. That is what Mr. Van Hoevenberg told us, that all negotiations will be carried in Seattle, be-

(Testimony of Vincent Rendon.)

cause the Canned Salmon Industry—they say that is representing by so many companies, including the Alaska Packers, the Red Salmon, and then the Alaska Salmon.

Q. What I asked you was, you did carry on all your negotiations in Seattle? A. Yes.

Q. Did you have any negotiations in San Francisco with Mr. Paul St. Sure?

A. Yes, with wage scale.

Q. How many meetings did you have with Van Hoevenberg and Mr. Paul St. Sure?

A. I think in Seattle it is 18 meetings.

Q. 18 meetings in Seattle?

A. While I was in Seattle. But I don't know if they have any meeting when I was not there.

Q. In other words, you don't know how many meetings they had, but you know they had at least 18 because you were there. And when *was you* had, do you recall, approximately?

A. That is on March 7th.

Q. And when was the last meeting you had up there, if you recall, approximately?

A. That is May 29th.

Q. When you made this offer about going on the San Francisco 1939 wage scale? A. Yes.

Q. And how many meetings did you have in San Francisco at which you were present?

A. While I was here in San Francisco I met Mr. Moore about three times, and then one Mr. Paul St. Sure.

Q. That is, four meetings altogether or three meetings altogether? A. Four meetings.

(Testimony of Vincent Rendon.)

Q. Four meetings altogether. One with Mr. St. Sure and the other three with Mr. Moore?

A. Mr. Moore. [29]

Q. What was discussed at the meetings in San Francisco with Mr. Moore and Mr. St. Sure?

A. We cannot discuss. I told them that we cannot discuss about the agreement. The only discussion that we can make to the Company is the Manning scale and improvement.

Q. Will you explain to me what the Manning Scale is? I am not familiar with it.

A. You see, in the canneries sometimes they carry for one line 42 men, sometimes 44, and then in five lines in some canneries they carry 150, sometimes 160. That is what we have to contact the companies about, the Manning Scale—how many men they are going to employ in this season.

Q. In other words, the number of men it is necessary to man the line? That is what they call the Manning Scale?

A. Yes, sir.

Q. Now, what did the unions contend as to the number of men that would be required?

A. We don't contend anything. The only things that we are asking sometimes to the companies that they need some more men in a certain place to carry on the production because of the speed of their machinery.

Q. In other words, you had a feeling unless the companies had enough men that they would speed

(Testimony of Vincent Rendon.)

up the machinery and make your fellows work harder, is that it? A. No.

Q. Will you explain it to me? I don't want to put words in your mouth.

A. Well, you see, in some of their canneries they had 120 to 150 can a minute, and some canners 145. To keep up their speed of their machine required more men.

Q. Required more men? A. Yes.

Q. What was the company contending? Did they contend they needed more men or fewer men?

A. Sometimes the companies say they cannot hire any more men.

Q. And you felt they should hire some more men?

A. Yes, I feel to keep up the speed of this machinery.

Q. They should hire additional men, you felt?

A. Yes.

Q. And so the discussions you had with Mr. Moore and Mr. St. Sure were in regards to how many men should be hired to go up there?

A. Yes, sir.

Q. And the Company wanted a certain number and the unions felt they should hire more. Was that the way the matter was discussed?

A. The Company sometimes say they cannot add more men. Well, the unions, we cannot insist because the company is the one that pays. [30]

Q. I know that. In these discussions you had these discussions, you say, lasted an hour or two hours. There was some discussion, wasn't there, as to how many men should be hired? A. Yes.

(Testimony of Vincent Rendon.)

Q. And you contended they should hire more than they wanted to hire, wasn't that it?

A. Well, I was to tell to the Company that we can't keep up the speed of your machine. You have to hire some more men so to put up more production in your plants.

Q. And the companies felt the men they wanted to hire were enough to keep up the production?

A. Yes.

Q. That is correct. So the discussion centered around that *particul* subject?

A. Yes. And sometimes about the quarters, the living, where we lived at. Sometimes we don't have enough beds to sleep, or sometimes the houses is not fit to live a human being.

Q. I understand. And you were contending you should have more beds?

A. No. We contended that the help should have better quarters.

Q. The men should have better quarters?

A. Yes.

Q. And the company was taking the position the quarters you had were adequate for the purpose?

A. Yes.

Q. So you had some discussion about that?

A. Yes.

Q. And did you have those discussions with Mr. St. Sure and Mr. Moore here?

A. Yes.

Q. During those four meetings you had?

* A. Yes.

(Testimony of Vincent Rendon.)

Q. Was there anything else discussed at those meetings?

A. I think that is all that I can remember.

Q. How long would you say those meetings were? Those four meetings on the average?

A. Well, sometimes we stay for half an hour, sometimes an hour and half, and then one we stayed over two hours with Mr. Jones and Mr. Kellogg.

Q. That lasted how long, the one with Kellogg?

A. Over than two hours, because those superintend the companies operation in Alaska.

Q. In Seattle you had these meetings with Mr. Van Hoevenberg and Mr. Ellsworth. You had 18 meetings, you say. What was discussed at those meetings? Wages was discussed, for one thing?

A. Wages, No.

Q. Wages were not discussed?

A. Was not discussed. The only discussion we have is the wording of the contract. [31]

Q. The only discussion you had was the wording of the contract? A. Yes.

Q. What provisions of the contract did you discuss?

A. Like previous years—the union, who have the right to ship our men in Alaska? Our members. But this year the company—Mr. Van Hoevenberg and Mr. Ellsworth there—was telling us they are going to put their own men to do the hiring of the men.

Q. Explain that to me again? What you say at first there?

(Testimony of Vincent Rendon.)

A. Previous year we are sending our own men.

Q. You sent your own men. In other words, you picket out the men who were to go under the contract?

A. They are members of our union, surely.

Q. In other words, you check me if I am wrong, the practice has been in the last three or four years for your union to make a contract with the employers. Prior to this year it was with employer separately?

A. Yes.

Q. With the Alaska Packers, for instance?

A. Well, you see, we did not mention the name of the companies in Seattle. Van Hoevenberg was negotiating the agreement for the whole Canned Salmon Industry. And then he was always contending that the companies would hire the men.

Q. He contended the company would have the right to pick out the men?

A. Yes.

Q. So long as they are members of your union, of course?

A. Well, there is a provision of their contract. It says there in 1939 that the companies have a right to put their own men on and then the unions give them some kind of permit card to work in the industry. But in San Francisco—we don't have that provision here in San Francisco.

Q. In San Francisco the Union picks out the men?

A. We send the men and the companies will tell us only that they need four hundred and we will give them the four hundred.

(Testimony of Vincent Rendon.)

Q. And you send them down to the boat and they get aboard the boat and go to Alaska?

A. No. They go in the boat and the companies will distribute them their bands and everything. And the company steward says he is all right. If the company doctor says he is no good—he has some kind of sickness.

Q. He is taken off and another man put in his place? A. Yes. [32]

Q. And that medical examination, that doctor examination, is done here in San Francisco?

A. San Francisco.

Q. Before the men get on the vessel or the time they get on the vessel?

A. The time they go in the vessel.

Q. Now, what else did you discuss up there in Seattle? What other wording?

A. We discussed about the wages twice, but always Mr. Hoevenberg has refused they would operate Alaska if there will be an additional expenses for it more than 1939 Seattle.

Q. In other words, he took the position that they could not pay any more than they had paid in Seattle in 1939? A. Yes.

Q. And that was less than they paid in San Francisco in 1939? A. Yes.

Q. In other words, the Seattle Canneries had a better deal with the union than San Francisco?

A. I don't say that we have a better deal here.

Q. They get better wages? Put it that way?

A. No, we have the same wages in Bristol Bay.

(Testimony of Vincent Rendon.)

Q. What about Central Alaska?

A. Central Alaska? That is only about ten dollars, a little bit higher, but the way we take that position, we ask for ten dollars more because they are using—they don't buy the fish there. They have a truck and they just take the fish right there in that trap.

Q. Well, the fact of the matter is, though, the wages the Seattle operators had to pay in 1939 were not as much as the wages which the San Francisco operators had to pay in 1939? Isn't that right?

A. I don't think that is it.

Mr. Resner: Yes, that is right as the agreement sets it forth. That is in evidence.

By Mr. Madison:

Q. Well, now, the question of wages. As I understand it, Mr. Van Hoevenberg took the position that the canneries were not able to pay any more than the 1939 Seattle wages, or at least they would not pay it?

A. No. He take his position to take it or else, 'If you don't take that wages we will close the operations, and then you fellows will be out of work.'

Q. And you took the position that you would not work except on the basis of the 1940 proposed contract which you gave?

A. No. Our position here is to accept the 1939 of San Francisco wages. [33]

Q. When did you first tell them that?

A. The first time? In March 8th they told me

(Testimony of Vincent Rendon.)

that it is 1939 wages. I misunderstood, myself. I sent a wire here in San Francisco that the companies they are offering the 1939 wages and conditions. But after the next day I find from them what this 1939 wages and conditions is. They say that it Seattle.

Q. What?

A. Seattle wages and conditions. Because I want to clarify that because our membership here in San Francisco want to go on 1939 of San Francisco wages and conditions.

Q. I understand that you submitted to Von Hoevenberg an offer on May 29th to accept San Francisco 1939 wages, is that correct?

A. Yes, sir.

Q. Did you ever tell Mr. Von Hoevenberg before that you would accept 1939 San Francisco wages?

A. No, because his position was to take it or else.

Mr. Resner: When you say that, you are referring to the Seattle Scale?

By Mr. Madison:

Yes.

Q. Take the Seattle wage scale, and nothing else?

A. And nothing else.

Q. And you never made any offer to Mr. St. Sure or Mr. Moore down here in regard to taking the 1939 San Francisco wage scale?

A. We did once. That was on April the 3rd when they give us the ultimatum of Chignik and Karluk. Yes.

(Testimony of Vincent Rendon.)

Q. That is the Central Alaska operation? The one that leaves the 1st. A. Yes.

Q. And, you say, at that time?

A. That we like to sign San Francisco. We like to sign a memorandum agreement not less than 1939.

Q. Not less than 1939?

A. Not less than 1939 wages and conditions.

Q. San Francisco? A. San Francisco.

Q. What do you mean, not less than that? How would you ever determine the wages if you had it 'not less than'?

A. Because you would have a contract off them for 1939. That is a hundred. That is, not less than 1939. That is a hundred dollars and ninety dollars.

Q. How would you determine the wages? You say not less than something. How would you determine how much they would be? [34] Do I make myself clear? I guess not. Let me ask you the question this way. Do I understand that you told Mr. St. Sure on April 3rd that you would go to Alaska for the San Francisco 1939 wages?

A. Yes.

Q. You say not less than that. You mean you would go for those wages?

A. No. We will go for it, but if they will offer us ninety nine dollars we won't go for it. But if they will offer the same wages—a hundred dollars and ninety dollars, 1939—we will go for that.

Q. You will go for that? A. Yes.

Q. You told that to Mr. St. Sure?

A. I told him that. I told that to Mr. Moore.

(Testimony of Vincent Rendon.)

Q. You told that on the meeting of April 3rd?

A. That is the last meeting that we had.

Q. That is the last meeting you had with Mr. Moore?

A. Mr. Moore. That is April 3rd.

Q. You never confirmed that by a letter? You never wrote a letter on that?

A. No.

Q. Are you sure that wasn't May 3rd? Are you sure it was April 3rd?

A. That may be the deadline, I don't know. What is the date? You say that is the deadline, May 3rd?

By Mr. Resner:

Q. The point is when was this offer made to Mr. St. Sure to sign for 1939 San Francisco wages?

A. That is about? We was there in your office twice, I think. Mr. Moore, he can recall it—in the afternoon and then after six o'clock.

Referee Roden: When was it, Mr. Moore, do you remember?

Mr. Paul St. Sure: May 3rd.

A. (Mr. Rendon) Yes, May 3rd.

By Mr. Madison:

Q. Well, May 3rd, Wasn't that the date when the companies notified you it would be the last day they could sign up if they were going to Bristol Bay?

A. No, I believe that is the Chignik and Karluk.

Q. Now, in going back to this question of whether you were to hire the men, to choose the men to work, or the company were to choose the men to work, I understood you to say that in Seattle companies in the past years had picked out their own men. Is that right? [35] Members of the union?

(Testimony of Vincent Rendon.)

A. No. Sometimes they pick out outside.

Q. Sometimes they pick them out outside?

A. Sometimes they are not members of the union.

Q. But in San Francisco the union, as you have explained, chooses men? Sends them down to the boat under contract, in San Francisco?

A. Yes.

Q. Did you have a discussion with Mr. Von Hoevenberg as to what he wanted and what you wanted in regards to 1940?

A. Well, he says the industry are paying their money. That they want to see that the men that goes to Alaska is a good man.

Q. And you contend that you wanted San Francisco to do it the way you had always done it before?

A. Yes, because our members here they have an experience since 1935.

Q. And how many times was that discussed, do you recall? Three or four or five times?

A. I can not recall how many times, because always we have that discussion.

Q. The same thing was discussed at all the meetings, pretty near?

A. The same thing every day, every time we have meetings, and he always say, "I will accept this, but don't put it into it because I have to bring this to my company. If my company likes it we will bring you back again that they like it. But don't put it into record at all because we are like messenger boys. We have to bring back and forth what they like."

(Testimony of Vincent Rendon.)

Q. Now, did they ever agree? Did you ever reach an agreement on that as to whether you would follow the old way or do it Mr. Van Hoevenberg's way?

A. They always say, "You have to accept this."

Q. Or else? A. Or else.

Q. Now, what else did you discuss besides the wages and question of who hires the men?

A. That is all we discuss, wages and conditions.

Q. What conditions were discussed?

A. The 1939 or the 1940.

Q. Were there any particular conditions other than wages that were discussed? Was there any seniority discussed? Any argument or dispute in regards to seniority? A. No.

Q. Was there any argument or dispute in respect to any conditions except the ones we have already talked about? A. No.

Q. In all these 18 meetings the only two things discussed were wages and methods of hiring the men? A. Yes. [36]

Q. And these meetings lasted, as I understand it, an hour, half an hour?

A. Hour, sometimes, half an hour, sometimes, mostly two hours, and then sometimes they says they don't have no time.

Mr. Madison: No further questions.

(Testimony of Vincent Rendon.)

Examination by Referee Roden:

Q. Have you a copy of the 1939 contract?

A. What is that?

Q. Have you a copy of the 1939 contract?

A. Yes, there is a copy.

Mr. Resner: It is in evidence. The 1939 San Francisco and Seattle agreements are both in evidence. They can be compared with reference to wages and conditions.

By Mr. Madison:

Q. Could I ask one more question? I want to make it clear you never did reach an agreement with these people in Seattle, did you?

A. The last meeting that we have we have an agreement to them of this 1939 of Seattle. And then they give us some kind of a raise to the kitchen personnel, but not to the canneries cannery workers.

Q. So you really never did reach an accord?

A. We did reach.

Q. You did reach an agreement? A. Sure.

Q. When did you reach it? The last meeting in Seattle?

A. The last meeting, I forget the date.

Q. You say the last meeting was May 29th?

A. No, that is not—yes, May 29th.

Q. And you reached an agreement with them?

A. Yes. We sent a man, already, in Alaska.

Q. That is, in regard to the people in Seattle.

A. Yes.

Q. But I am talking now about the people in

(Testimony of Vincent Rendon.)

San Francisco. A. You don't use us here.

Q. You never did reach an agreement?

A. No. Well, we did. We have an agreement to the Canned Salmon Industry.

Q. In regard to the Seattle workers?

A. No, that includes Seattle, Portland, and San Francisco.

By Mr. Resner:

Q. But they are not using anybody from the San Francisco operation?

A. (Mr. Rendon) No. They are not using anybody from the San Francisco union. [37]

By Mr. Madison:

Q. Is it your contention the agreement you made, signed in Seattle, was to cover San Francisco also? A. Yes.

Q. That was your intention in signing the agreement that the agreement was to cover San Francisco also?

A. That it includes San Francisco, what contract we have now.

Q. The contract you have now includes San Francisco? A. Yes, includes San Francisco.

Q. And you made that agreement with Van Hoevenberg on May 29th? A. Yes.

By Mr. Resner:

There is some confusion here. I don't think you understood, Mr. Rendon. There wasn't any agreement signed for the San Francisco operations here, was there?

(Testimony of Vincent Rendon.)

A. No. But when I left there I did not sign the contract but I left my word.

Q. *Were* are not talking about what you did. We are talking about the union. The union didn't sign for the San Francisco operation this year, did they?

A. No, because the companies here!

Q. They wouldn't accept the San Francisco 1939 wage scale? Is that right?

A. Yes.

Q. The contract that was signed in Seattle was for the operation from Seattle, was it not?

A. No. There is a provision that what wages and conditions of San Francisco 1939 were it won't be taking away from them by signing this.

Q. In other words, if there was some work done from San Francisco which had the same wages and conditions that previously existed for San Francisco that would apply then to the operation of this port?

A. Yes.

Mr. Resner: I think the best way to *it* it is by reference to the contract.

Mr. Madison: Have you got a copy of the 1940 Seattle contract?

Mr. Resner: I haven't a copy of it. As I understand it, a memorandum was to be added to that in case it could be arrived at for the San Francisco wage scale, and that was never arrived at. [38]

Mr. St. Sure: My recollection was *there* was a provision *there* wages for San Francisco were still to be negotiated.

Mr. Resner: That is true, but when Mr. Rendon

(Testimony of Vincent Rendon.)

speaks of coastwise agreements here he is talking about agreements for the three locals,—Seattle, Portland, and San Francisco—where uniform wages and conditions do apply. There are many instances it does. And if there were any differences where San Francisco had superior wages and conditions those were to be separately agreed upon for the operations. Is that correct?

Redirect Examination

By Mr. Resner:

Q. Is what I say your understanding of the situation, Mr. Rendon? Did you hear what I said?

A. Yes.

Q. Is that your understanding of the situation?

A. Yes, that is my understanding.

Q. I want to ask you these additional questions. When Mr. Madison asked you these questions about the Manning Scale with regard to the operations in Seattle the union from San Francisco took the position, did it, that there was a speed up and that, therefore, the operation was undermanned? Is that what your testimony was?

A. Yes. Because previous years they was running to their machinery two hundred and fifteen can in a minute, but this year the Red Salmon and some of the Alaska Packers told me they are going to run to two hundred forty-five or two hundred sixty-five.

Q. In other words, they were going to increase their production from San Francisco and because

(Testimony of Vincent Rendon.)

you knew they were to up their production you asked for an increase of the Manning Scale:

A. For increase of Manning Scale.

Q. I want to ask you this. Did the union ever declare a strike for the present season against the companies? A. Never.

Q. The season starts in Central Alaska approximately when? The Bristol Bay season starts on the 5th of May every year? 1940? Is that right?

A. Yes.

Mr. Madison: What was this? Judicial notice?

Mr. Resner: When the season starts, May 5th.

(Indicating) These are the Commission's dates.

Referee Roden: Yes. [39]

Mr. Madison: The Commission has fixed those dates?

Referee Roden: Yes.

By Mr. Resner:

Q. Immediately prior to May 5, 1940, did your union, Local No. 5, have any workers employed at Bristol Bay? A. No.

Q. When was the last time you had workers employed at Bristol Bay?

A. That is in August, 1939.

Q. August, 1939. That was when the 1939 season expired? Your contract expired?

A. Yes.

Q. And from that time down to May 5th of this year you haven't had any workers there?

A. No.

(Testimony of Vincent Rendon.)

Q. Is the same situation true of Central Alaska, Southern?

A. I don't mean Central Alaska. They might use the residents.

Q. Your people? What other operation do they engage in besides the Bristol Bay one?

A. That is Central Alaska and Chignik and Karluk. That is all we have here in San Francisco.

Q. Referring to what is described as the Alaska Peninsula operation, you send workers there every year, do you not?

A. That is, I don't know what they call that, that is the Peninsula or Chignik and Karluk—I don't know what District that is in Alaska, whether that is Central Alaska or the Peninsula, I don't know.

Mr. Paul St. Sure: We call it Central Alaska. I don't know what they do.

Mr. Resner: The Commission has fixed the dates of the industry; and, apparently, the description given by the Alaska Unemployment Commission is different from the ones we include in our grading.

Mr. Madison: They must be familiar up there with which canneries fall in which District.

Mr. Resner: That is right. I wonder if you could give us this for the Alaska Peninsula operations?

Referee Roden: Alaska Peninsula takes in Chignik. Karluk is on Kodiak Island.

By Mr. Resner:

Q. Now, referring then, Mr. Rendon, to the

(Testimony of Vincent Rendon.)

Alaska Peninsula operation, that is Chignik, prior to April 1st of this year did you have any workers employed in the canneries there? A. No. [40]

Q. When was the last time you had workers employed in that operation?

A. The last time we have there is September.

Q. 1939? A. 1939.

By Referee Roden:

Q. That is where? At Chignik?

A. Chignik.

Q. & Referring to Kodiak Island?

A. You see, in Kodiak I think that is September and in Chignik is October was the date.

Q. The Alaska Peninsula season is April 1st to September 10th, that is Chignik? A. Yes.

Q. You had nobody employed this year prior to the opening of the season, and the last man you had employed at Alaska was at the end of the last year's season? That is correct? A. Yes.

By Mr. Resner:

Q. That is true of all your operations where your union sends workers to Alaska? A. Yes.

Q. The last time you had workers of any kind was last season? You never sent them at all this season? A. No.

Mr. Resner: In 1939 whenever they stopped work. I am just referring to the seasonal periods as they are described by this Commission.

Mr. Oliver: Yes. That is what you mean? (Indicating)

(Testimony of Vincent Rendon.)

Mr. Resner: No. I mean in addition to that if it is different. The fact the last time they had workers employed in Alaska was when the last season closed, the 1939 season closed.

Mr. Oliver: Irrespective of whether that corresponds with the similar date?

Mr. Resner: Yes, I just referred to this as a matter of convenience.

By Mr. Resner:

Q. In other words, you didn't have any workers at all in the 1940 season in Alaska from San Francisco? A. (Mr. Rendon) No.

Q. And you didn't declare a strike from San Francisco? A. No.

Q. Are you willing to go now on the basis of the 1939 San Francisco agreement? A. Yes.

Q. All these men I see are members of your union?

A. Yes, they are all members of the union; and they are willing to go now or tomorrow if the companies will pay the 1939 wages and conditions. [41]

By Referee Roden:

Q. The reason you are not up there now is because the Company will not pay you 1939 wages?

A. Yes.

Q. Is that the only issue?

A. That is the only issue.

By Mr. Resner:

Q. In other words, these men are ready to sail

(Testimony of Vincent Rendon.)

tomorrow on the basis of the 1939 San Francisco wage scale? Is that right?

A. Yes, that is right.

Mr. Resner: Any other questions?

That is all unless you have some questions, Mr. Referee?

I want to offer at this time some evidence on the basis of the curtailment with regard to the present salmon season in Alaska, Mr. Referee; and, I think, these are things that we can also take judicial notice of. I don't suppose Counsel for the Packers will have any objection to having them introduced?

Regulations of the Secretary of the Interior—I only have these copies. I only have one copy of each, though. I want to point to the 1939 Regulations, Page 11, Paragraph 18, that has reference to the 60 hour closed period weekly; and on Page 12 * * *

Mr. Madison: What is the first page?

Mr. Resner: Page 11 of the 1939 Regulations, Paragraph 18 on that page running over to the top of Page 12. There is, as I say, 60 hours weekly.

And then I want on the 1940 Regulations to draw attention on Page 11, Paragraph 18, extending and enlarging the closed weekly period to 84 hours. In other words, the closed season is increased 24 hours a week. And then, on the same Page 11 of the 1940 Regulations, Paragraph 19 (b) dealing with the closing of certain fishing areas described there.

(Testimony of Vincent Rendon.)

I assume that the Commission will take judicial notice of these regulations.

I would like to introduce them into evidence at this time. They are together. One is inside the other. (Indicating) [42]

Referee Roden: Yes.

Mr. Resner: I want to call Mr. Whaley.

MR. MORRIS WHALEY,

557 Clipper Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. Will you give us your name and address, please?

A. Morris Whaley, 557 Clipper Street.

Q. You are a member of Local 5, Alaska Cannery Workers Union? A. Yes, sir.

Q. You are Chairman of the Negotiating Union for this season, in San Francisco?

A. Yes, sir.

Q. And you have been a member of the union for how long? A. Since 1938.

Q. Were you a member of the Negotiating Committee last year? A. Yes.

Q. Now, I want to direct your attention to the negotiations here in San Francisco. You and your Committee met from time to time with the representatives of the Packers?

(Testimony of Morris Whaley.)

A. That is right.

Q. Who did you meet with?

A. We met with Mr. St. Sure and Mr. Moore.

Q. These are the Gentlemen across the table from me? The attorneys for the Packers?

A. Yes, sir.

Q. Can you recall when the first meeting was?

A. Well, sometime in March. We started in March, and we had four or five meetings. I think there was only two meetings there where we discussed mostly Manning Scale and general conditions.

Q. Discussed mostly Manning Scale?

A. And general conditions.

Q. Manning Scale and general conditions?

A. Yes.

Q. How many meetings did you have here in San Francisco with your local?

A. I would say five or six.

Q. And, as I understand the situation, the question of the wage negotiations were transferred to Seattle, were they not, where an attempt was made to get a coastwise agreement?

A. That is correct. We were merely handling the personnel and the conditions down here.

Q. That is right. Now then, as I understand it also, what was the position of your union with respect to wage scales for this season?

A. Everything relating to wages we had turned over to the Seattle Committee. [43]

(Testimony of Morris Whaley.)

Q. With what instructions? What did the union want this year?

A. Well, we went up. There was a deadline issued on the Chignik and Karluk operations by Mr. St. Sure, and we went over there to discuss a memorandum of agreement to take these workers up to Chignik and Karluk. And we had offered the 1939 San Francisco agreement to apply to these workers—nothing worse than that!

Q. Nothing less than the 1939 wage scale from San Francisco? A. Yes.

Q. Did you offer the negotiators, the representatives for the operators, the 1939 San Francisco wage scale? A. That is right.

Q. Can you tell us when and where that was who was present?

A. Well, we had our attorney with us, and we went down.

Q. You are referring now to Mr. Anderson, are you?

A. Yes, George Anderson. And we went down there, and the Packers.

Q. When you say you went down there, you went to their office on California Street?

A. To Mr. St. Sure's office, yes. And we went in there to discuss. And they had told us they were not shipping any men, so we figured there was no necessity for a memorandum of agreement; so, the result was we just didn't sign any.

Q. At that meeting did they say they weren't going?

(Testimony of Morris Whaley.)

A. None of our men from San Francisco were going.

Q. They said they didn't intend to send any men from San Francisco?

A. That is right.

Q. At that time did you offer the San Francisco wage scale to Mr. St. Sure? A. Yes.

Q. Who else were there for the Packers?

A. Mr. Moore.

Q. And yourselves? Who was there?

A. Well, the complete Negotiating Committee—
Brother Noland and Brother Acosta.

Q. Vargas? A. And Vargas.

Q. Cano? A. And Cano.

Q. And Livingston? A. Livingston.

Q. And Wellman?

A. And Wellman, yes.

Q. You heard Mr. Rendon's testimony with regard to whether a strike situation exists. Has the union called a strike against the Packers?

A. Well, we haven't even discussed the agreement. All we were doing was negotiating, like I say, personnel and conditions. [44]

Q. In other words, you were trying to get an agreement and you couldn't get it? Is that right?

A. That is right.

Q. What is the attitude of the men about going to Alaska?

A. Well, the men are tickled to death to go on
1939.

(Testimony of Morris Whaley.)

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(Testimony of Morris Whaley.)

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A. That is right.

Q. What is the attitude of the men about going to Alaska?

A. Well, the men are tickled to death to go on 1939.

(Testimony of Morris Whaley.)

Q. On the 1939 wage scale conditions?

A. Yes.

Q. And are ready to go today or tomorrow?

A. Correct.

Q. And that is the position of the union, too?

A. That is right.

Q. Were you at a meeting on March 27th at 230 California Street with Mr. Moore and Mr. St. Sure?

A. March 27th? Yes, that was the meeting.

Q. Mr. Moore and Mr. St. Sure. Do you recall any conversation at that time? Any statement by Mr. St. Sure with respect to the curtailment affecting the operations?

A. Well, I know we asked Mr. St. Sure several times just how many canneries they intended to operate and the amount of men they would require for these various operations, and he stated, he wasn't ready at this time, he couldn't say they were going to operate at all; and it depended—I forget just what the words were, but the general contention was that the operations was called off for this year. That was the impression we got at the time.

Q. At this particular meeting on March 27th was there any statement by Mr. St. Sure on the subject of the curtailment affecting the operations, that you recall?

A. I made some statement there, but I just don't recall the words.

Q. Who was the Recording Secretary for your Committee?

A. Brother Wellman.

(Testimony of Morris Whaley.)

Q. Is he here?

A. I don't know whether he is or not. I can get him if you want?

Q. We can call him later. He took the minutes. Did the representatives of the Packers ever say that they were going to Alaska, in connection with any of these negotiating meetings you had?

A. Well, at no time did they ever give us anything definite. They had sent a few letters to the effect if we didn't take this, get together by such and such a date, why, the operations were going to be cancelled.

Mr. Resner: I think that is all.

Cross Examination

By Mr. Madison:

Q. Mr. Whaley, you weren't in Seattle? You didn't attend any [45] of the meetings in Seattle?

A. No, sir.

Q. Your participation was here in San Francisco? A. Yes.

Q. How many times do you recall, in a general way, you met with Mr. Moore and Mr. St. Sure? Five or six, did you say?

A. Approximately.

Q. Now, did you discuss the wages here at any time? I think you mentioned something about a meeting, I didn't get the date, where you discussed wages?

A. This was on the memorandum agreement.

Q. This was on the memorandum agreement?

A. In other words, they had sent us a notice

(Testimony of Morris Whaley.)

we had to get together by such and such a time or the Chignik and Karluk operations were off. We went over there to—we knew we couldn't get through with the general agreement by then, so we went over to sign a memorandum agreement.

Q. Your idea was you would sign some kind of temporary agreement so as to permit the operations to go forward up to Alaska within the time specified in these letters. Is that it? A. Yes.

Q. What I don't quite understand is whether the negotiating were being conducted at the same time in Seattle?

A. Seattle was handling all the agreement—wages and general agreements, coastwise agreement.

Q. Was it the union's request or the employers' request that the industries requested that the wages be handled in Seattle as against being handled here, as the way they had been in the past years, do you recall that?

A. I recall that. Well, they just got together. The industry was sent a letter, I understand, that we were going to negotiate on a coastwise basis and the companies agreed to it.

Q. And you proceeded? The Committee went up there and proceeded to negotiate?

A. Yes.

Q. This Mr. Rendon, who was on the stand before you, went up there? A. Yes.

Q. And you had a Brother Woolf go up there, did he? A. Yes.

(Testimony of Morris Whaley.)

Q. And they had a negotiation up there?

A. Yes.

Q. Then, when you received the notice, a letter here, from the Industry, from Mr. St. Sure, to the effect that unless something was done before a certain date it looked like the operations wouldn't go forward, then you did come in and discuss wages with Mr. St. Sure. Is that it?

A. No, we merely stated that we could go up under a memorandum of agreement, providing we didn't get anything worse than 1939. [46]

Q. That is what I am getting at. In other words, this memorandum agreement proposal you accepted was there would be a bottom or floor on the wages which wouldn't be any worse than the 1939 agreement. That if something better was negotiated in Seattle for you you would get the benefit of that, too. Was that about the size of it?

A. That was the general understanding.

Q. So, when you said that was your general understanding of the proposal, you mean that?

A. Yes.

Q. So, when you said and when Mr. Rendon said you wouldn't get any worse than 1939, or at least 1939, wages what he meant was that would be the least they would pay. And if they would pay anything more it would be subject to future negotiations. That was about it?

A. In 1939 we had a similar condition and we signed a memorandum of agreement to go up to Chignik and Karluk under certain conditions.

(Testimony of Morris Whaley.)

Q. That you would get the Bristol Bay pay, or something like that?

A. No. We signed nothing worse than 1937. And, on the basis of that, if anything better were negotiated in the present year that would apply to the Chignik and Karluk crews.

Q. Yes. And that year, as I recall it, Seattle had an arbitration up there and something better was given to them after they got up?

A. Yes, fact finding.

Q. And that was the proposition the memorandum agreement your Committee proposed here to Mr. St. Sure was you make a tentative or memorandum agreement. That it be nothing less than San Francisco 1939 wages with the understanding that if more was negotiated later on you would get the benefit of any additional amount that could be negotiated?

A. We were merely doing this so our men wouldn't be deprived of work at Chignik and Karluk; rather than hold the expedition up we were willing to go on the 1939 wages and conditions.

Q. Well, let me get that straight again. Were you willing to go finally on the basis of the 1939 wages and conditions, or did you agree to go on the basis that would be the bottom, that would be the floor, you might get more?

A. The memorandum of agreement was to read this way, that the wages and conditions would not be worse than 1939.

(Testimony of Morris Whaley.)

Q. That is the way it was to read?

A. Yes.

Q. And that was substantially all it was to say?

[47]

A. Well, eventually, if they negotiated in Seattle a few additions to this, well, it would apply to that.

Q. You would get the benefit of those?

A. Yes.

Q. That was my understanding. Did you make that proposition verbally to Mr. St. Sure?

A. Well, we discussed it and the fact that they cancelled the operations due to some other things, I don't know just what were their reasons. But they had arrived at the fact they weren't going to take any of our men.

Q. That is, at Chignik and Karluk.

A. That is right. So, if they weren't going to take any of our men, there was no necessity for a memorandum of agreement. We told Mr. St. Sure that.

Q. So, no offer was made at that time?

A. We?

Q. Did you make an offer? A. Yes.

Q. You made that offer verbally or in writing?

A. Well, we have minutes of the meetings.

Q. I mean, to Mr. St. Sure?

A. That is right.

Q. Verbally?

(Testimony of Morris Whaley.)

By Mr. Resner:

Q. Did you tell it to him or did you write it to him? A. Orally.

By Mr. Madison:

Q. And that was what date, approximately?

A. That was about the dead line for the Chignik and Karluk operations.

Q. Before or after?

A. No, we stayed there a couple of meetings, right in there. And this was before the dead line, of course, we were trying to get the Chignik and Karluk bunch away.

Q. When you speak of the dead line do you speak of the date Mr. St. Sure stated in his letter to the union the deal had to be closed before that date?

A. Or else the operations were off.

Q. And is it before that date he told you, then, the operations were off anyway?

A. Well, they couldn't get together with somebody, I don't know who it was; and, naturally, we didn't have to sign any memorandum agreement.

Mr. Madison: That is all.

Redirect Examination

By Mr. Resner:

Q. I want to ask you with respect to Mr. Rendon's testimony as to your union having employees in Alaska for those operators at any [48] time during the present season?

A. No, we haven't.

(Testimony of Morris Whaley.)

Q. The last time you worked up there or your men worked up there was last season, as Mr. Rendon testified? A. That is right.

Q. There is no strike situation in Alaska at the present time so far as your union is concerned?

A. No. Our agreement was terminated at the end of last season.

Q. This year you were trying to get this new agreement, as you have testified?

A. That is right.

Examination by Referee Roden:

Q. The contract is made for just one season, isn't it? A. Yes.

Q. Now, you say, Mr. Whaley, that the operators at Karluk and Chignik had decided not to take any of your men. That means men from San Francisco? A. That is right.

Q. Now, how do you know that they had decided not to take any men from San Francisco?

A. Well, this dead line was for——

Q. Karluk and Chignik?

A. I don't know the dates on this. The dead line was around May 3rd, I think it was.

Mr. Resner: I have a letter which I am going to offer in evidence later, Mr. Referee, dated April 22nd, written and signed by Mr. Moore, where he said, "Those operations have been abandoned because of inability to reach an agreement with the union."

I am going to offer a series of letters in evidence.

—

(Testimony of Morris Whaley.)

A. (Mr. Whaley): But, in answer to this question, our men weren't going up on the first boat, you see. We figured the men were going to get up on the first boat and, naturally, we wanted them to get away as quick as possible; so, we were willing to sign this memorandum of agreement.

By Referee Roden:

Q. And they wouldn't take that?

A. No. None of our men were going so we, naturally, figured the agreement was off.

Q. And what did they say about this memorandum agreement?

A. Well, none of our men were going on the first boat which, I think, was the Cherokoff. They said "Well, your men are not going up on there, but they will be governed by what is ultimately signed in Seattle." [49]

Q. Did they say why your men were not going up?

A. They claimed they might lay around there for a month, or something. I don't know what reason they give. In other words, our men weren't to go on the first boat, so we had no necessity to sign this agreement.

Q. And all you were negotiating about down there was about the manning of the different lines?

A. That is right.

Q. Anything else?

A. And general conditions.

Q. That means living conditions?

A. That is right.

(Testimony of Morris Whaley.)

Q. Was there any serious dispute about manning the different lines?

A. No. We never had any dispute. We discussed with the various Superintendents, that is Mr. Kellogg and Mr. Jones, the personnel in the Chignik and Karluk canneries; and we went over them in detail a couple of times and we had nothing serious. They had some new machinery they were going to use in some of their other plants. We didn't know just what was the nature of this machinery—how many men it would require.

Q. Did you determine in your union meetings the number of men that should be employed in any particular cannery at any particular line?

A. We discussed that each year with the Packers.

Q. You discussed that with them. Was there any issue about that last year?

A. Not to my knowledge.

Q. Now, you talked about living conditions also?

A. Well, there were a few minor things we wanted fixed up around the bunk houses, not nothing serious, though. The Packers never argue much with us about those things.

Q. Now, is it your impression that the operators here in San Francisco discriminated against you in favor of the employees in the Territory?

A. Now, my whole understanding of the whole thing since we have started negotiations was that the operations were off. I somehow felt that.

(Testimony of Morris Whaley.)

Q. What made you feel so?

A. Well, on account of this curtailment business. There is a lot of talk about curtailment, and we on the Negotiating Committee felt that the Packers didn't really intend to go.

Q. How do you know whether or not they have gone to Karluk?

A. Well, Karluk and Chignik.

Q. They haven't gone to Karluk and Chignik?

A. No, they haven't sent anybody. [50]

Q. Sent nobody from Seattle, either?

A. No.

Q. Why didn't they send anybody to Karluk from Seattle?

A. As I understand it, the plants were just closed down. They are not going to operate this year at all. That is the understanding we have.

Q. Do you know the reason why not?

A. Well, I understand there is a curtailment. That is the understanding we have.

Recross Examination

By Mr. Madison:

Q. Could I ask a question apropos of the last question? The Examiner asked you, Mr. Roden asked you, if there was any discrimination against your union on the part of the operators. Well, there has been no contentions of that kind at all, has there, as far as discrimination is concerned?

A. Well, the fact we didn't go to work.

(Testimony of Morris Whaley.)

Q. Well, nobody else, these operators have hired nobody else in your place?

A. Not to my knowledge.

Q. The Members of your union manned their entire operation? That is, the operation you generally manned, last season? Did you not?

A. We didn't send any this year.

Q. Last season? A. Yes.

Q. And the season before? A. Yes.

Q. And the last two seasons before that? That is, 1936, 1937, 1938 and 1939? A. Yes.

Q. You have always had a contract, your union, with each one of these three canneries, haven't you, those four years? A. That is right.

Q. And under that contract those men have gone up there each season and worked? Done the cannery workers job called for by the contract?

A. Yes.

Q. And now, this year, these negotiations took place and upon your suggestion, according to a letter, you took the wage angle of the thing up to Seattle and negotiated it up there with a representative of the industry. That is correct, isn't it?

A. Yes.

Q. Some of the other conditions were still negotiated down here, that is, the Manning Scale and these bunk conditions and other working conditions for the men, living conditions. Now, you never heard, did you, of any wish or any desire or any effort on the part of the operators to hire any men out of Seattle to go? There have been no

(Testimony of Morris Whaley.)

sessions of that kind you ever heard of, was there?

A. You mean?

Q. Of the operators here to hire men out of Seattle?

A. No. [51]

Mr. Resner: You mean, to take the place of the San Francisco men who have ordinarily done this work from year to year?

Mr. Madison: Yes. I am only asking that for Mr. Roden's benefit, because he seemed to have some feeling, possibly, moving the thing to Seattle there had been some discrimination.

By Mr. Madison:

Q. Your answer is you never heard of any session of that kind?

A. (Mr. Whaley): No.

Q. And, as a matter of fact, if the Packers had suggested or allowed men to be hired out of there you wouldn't have allowed those men to go, would you?

A. Well, in previous years we have always negotiated an agreement to go to Alaska and this year we didn't go to Alaska; so, we don't know just what our status is.

Q. You don't mean to suggest here that the Cannery Workers Union of the Seattle Local would have sent men up there to take the place of men in San Francisco? You don't concede anything of that kind would have been permitted by the union, do you?

By Mr. Resner:

Q. Suppose the cannery had tried to man the

(Testimony of Morris Whaley.)

operation that ordinarily is manned from San Francisco with Seattle people? What would the position of your people in Seattle have been?

A. We wouldn't like it.

Q. In addition to the fact you wouldn't like it, would the Seattle people have gone to Alaska?

A. I can't answer for the Seattle people.

Q. The Seattle Local would have to decide that for itself.

A. (No answer.)

Mr. Madison: I guess that has been cleared up. I don't know whether to ask this of Counsel or this witness, but it is very clear, Counsel, the curtailment to which you have reference to only applies to Bristol Bay and doesn't apply to Chignik or Karluk.

Mr. Resner: It applies, as I understand it—the Regulations are there. They speak for themselves.

Mr. Madison: Do you know anything about that? About the curtailment? [52]

Referee Roden: The regulations, themselves, speak for that, of course.

Redirect Examination

By Mr. Resner:

Q. Let's get this straight, Mr. Whaley, as a matter of fact, year to year the San Francisco people generally go back to the same canneries they worked before. Some canneries are worked out of San Francisco, certain out of Portland, and certain out of Seattle?

A. That is correct.

Q. And the three unions are all members of the

(Testimony of Morris Whaley.)

International Union, United Cannery Workers, Local No. 5 of San Francisco, Local No. 7 of Seattle, and what Local in Portland? A. No. 22-6.

Q. They each have canneries where they go from year to year? A. That is right.

Q. And you have always negotiated your own agreement here in San Francisco for your San Francisco operated plants?

A. That is right.

Q. This year you tried to get a coastwise agreement and so the wage proposition and other matters were turned over to the Negotiations Committee in Seattle to determine with the industry?

A. Yes.

Q. There were some matters peculiar to San Francisco left here to be negotiated in a memorandum agreement to be attached to the main agreement, if it could be arrived at? Is that right?

A. On the coastwise negotiation. You would need a Committee here to determine the Manning Scale, because the Superintendents of the various canneries have to have certain amount of men for their operations, and that it negotiated here, regardless.

Q. Regardless of what is done there. But you wanted to get uniform coastwise conditions on the question of wages and general conditions?

A. Yes.

Q. Leaving Manning to San Francisco negotiations? A. That is right.

Q. And then the operators up in Seattle offered

(Testimony of Morris Whaley.)

the Seattle wage scale for the whole industry, no matter whether the canneries were operated from San Francisco or Seattle or Portland?

A. Yes.

Q. And you instructed your Negotiating Committee up there to hold off for the San Francisco wage scale, at least?

A. That is right, at least.

Q. And you offered to negotiate or agree upon the San Francisco wage scale in a separate memorandum agreement. [53] That is the meeting you referred to held sometime in the latter part of—when was that with Mr. St. Sure?

A. Right around the dead line there, I don't know the date.

Referee Roden: March 27th, I believe.

By Mr. Resner:

Q. You wouldn't arrive at that agreement anyhow?

A. Well, they weren't going to send any of our men.

Q. They told you there wouldn't be any operations from San Francisco, and you didn't go to Karluk or Chignik and you can't go to Bristol Bay? A. Apparently not.

Q. But you are willing to go on the basis of the 1939 agreement. A. (No answer).

Mr. Resner: That is all.

Recross Examination

By Mr. Madison:

Q. I would like to clear this up. If I misun-

(Testimony of Morris Whaley.)

derstood it, I am sorry. Now, I understand you came in there about the time you call the dead line here, and you had a meeeting with Mr. St. Sure. And at that time you were prepared, according to your statement, to submit a memorandum agreement, that is right? A. Yes.

Q. That you have nothing less than the 1939 San Francisco wages?

A. That was for the purpose of getting Chignik and Karluk.

Q. That is what date? You fix at what date, about?

A. Well, the dead line was May 3rd, wasn't it?

Mr. Resner: That was the dead line handed down by the canners, the operators.

By Mr. Madison:

Q. Certainly. It wasn't March 27th, was it, you went in there?

A. We were in there before figuring if our men were going to catch the first boat they had to sign this memorandum agreement, because we knew the general agreement was going to take maybe months to negotiate.

Q. This meeting you had where you went in and made an offer of a memorandum agreement, that wasn't March 27th, was it?

A. I can get the dates.

Mr. Madison: Show him the letters. It wasn't March 27th.

Mr. Resner: It is going to take me a while to find. [54]

(Testimony of Morris Whaley.)

By Mr. Madison:

Q. If the date you call the dead-line date here on Chignik and Karluk was April 10th, then this meeting that you have reference to was on or about April 10th, wasn't it?

A. No, it was before this dead-line.

Q. How many? Day or two?

A. Well, it was in time to get the men away.

Q. Now, at that time what you found out was, wasn't it, that they had planned not to send your men on the first boat? Wasn't that it?

A. The understanding they weren't going to send our men.

Q. On the first boat?

A. No. We asked them specifically. If our men were going we were willing to sign a memorandum of agreement, but if our men weren't going there was no necessity for it.

Q. Were you talking about going at all, or going on the first boat? A. Going at all.

Q. So, your understanding of that meeting that you speak of was that you were told at that time the men were not going at all to Chignik or Karluk?

A. They didn't say that. They said that the reason we brought up the question of this agreement in the first place was the question of hurry. In other words, there was a deadline set and we wanted our men to get away, and we rushed down there with the attorney to talk to Mr. St. Sure to

(Testimony of Morris Whaley.)

draw up this agreement, providing our men were going to go.

Q. Providing there was going to be any operation at all, you mean?

A. That was the understanding we had, that our men weren't going to go.

Q. When you say your men weren't going to go, your understanding was nobody was going to go to Chignik or Karluk?

A. Well, the general understanding was that they weren't going to take cannery workers; so, therefore, we figured the operation was off.

By Referee Roden:

Q. What was that you said? I didn't get you.

A. When they give us this deadline, when we rushed over there, we rushed up and got our attorney and went down and tried to sign a memorandum of agreement, figuring that if our men were going to go we wanted to get them away; and at that meeting it seemed there was something with some other people went wrong or something. Some of the other unions hadn't signed, or something, and they told us at that time our men weren't going. So, we just didn't. There was no necessity for signing the [55] memorandum of agreement.

Q. And that was about how long before the deadline?

A. Well, it was in plenty of time to get away.

Q. You know whether the Karluk canneries and Chignik canneries are running at all this year?

A. No.

(Testimony of Morris Whaley.)

Mr. Resner: I don't think the witness is qualified to answer that question, Mr. Referee?

By Referee Roden:

I am asking if he knows. He can answer that question. He can answer yes or no, can't he? If he knows he can say.

A. I don't think they are.

Q. You don't know? A. I don't know.

(Remarks were made off the record.)

Q. What I am trying to get at is this, Mr. Whaley. Did you at any time have the understanding from any interview you had with any of the operators that no men would be shipped from San Francisco?

A. Yes. That was the general feeling we had all the time, that the whole thing was off. That was the general understanding of the members and of the Committee. As a matter of fact, we made a report that the Packers don't seem to want to go this year.

Q. And can you tell me in a few words how you arrived at that opinion, that idea?

A. Well, in previous years when we discussed the agreements we went over and went down and discussed the Manning Scale right down the line; and, well, we went into the thing in little details and we discussed little bits of things. And we discussed quite a long time. And, this year the negotiations weren't conducted that way. They were, well, we discussed for the Manning Scale on several occasions and Mr. St. Sure didn't know. We

(Testimony of Morris Whaley.)

asked them how many canneries he is going to operate and how many men he was going to require. They didn't know until one time they brought in the Superintendent of these two canneries, Chignik and Karluk, and they come in and we discussed Manning Scale. And we figured there might be a possibility we would go. But right after we discussed the Manning Scale nothing else happened and the deadline was approaching, getting closer and closer, and the men got to worrying about the work, you know. And, well, we never heard anything more until we got the deadline.

Q. Let me ask you another question. These negotiations that were [56] carried on, did they leave upon you the impression that they were being carried on in good faith to come to an understanding or simply as a kind of stall or put off proposition?

A. Well, personally, I figured that the Packers weren't going to go. I had that feeling all the time. That was my personal feeling.

By Mr. Resner:

Q. Will you answer the Referee's question whether or not it was your opinion these negotiations were conducted in good faith by the Packers or whether it was a stall?

A. Not like previous years. Well, it didn't seem like we were getting down to brass tacks.

By Referee Roden:

Q. Can you answer my question yes or no?

By Mr. Resner: Were the negotiations conducted in good faith?

(Testimony of Morris Whaley.)

A. Well, so far as I know. I would say so far as we were concerned the general opinion was that the operations were off.

By Referee Roden:

Q. Do you think it was just to keep you guessing?

A. Well, I wouldn't be a bit surprised.

Q. Did you ever make a report of that kind to your organization?

A. Well, the membership just before the deadline of the Chignik and Karluk operations kept asking questions what is happening on the Chignik thing, and we told them, "Well, apparently, the Packers don't want to go." I don't know what the conditions were with the other unions in the industry, but with us we had been over there trying to get these Manning Scales—and until we get Manning Scales we know we are not going.

Q. What happened with reference to Bristol Bay, if anything?

A. Well, Bristol Bay, that was all handled in the coastwise agreement. Of course, if they were going to Bristol Bay, they would discuss the personnel with us.

By Mr. Resner:

Q. You folks didn't sign for Bristol Bay?

A. No. We had no authority to sign anything outside of general conditions.

Q. They are not taking any of your men from Bristol Bay, are they? A. No.

(Testimony of Morris Whaley.)

Q. Let me ask you this, Mr. Whaley. The wage scale for cannery workers is the same for Seattle and Bristol Bay, is it not? A. Yes.

Q. And are the conditions different? Are there any conditions different?

A. No. To my mind I don't think they are. [57]

Q. Well, substantially, wage conditions and general conditions are the same for both San Francisco and Seattle for Bristol Bay?

A. I have never been at Bristol Bay. I don't know.

Q. The agreement will speak for itself. But you are Union Local 5 and Local 7 is in Seattle?

A. Local 7, yes.

Q. Local 7 is in Seattle. But there aren't any men going from San Francisco to Bristol Bay?

A. No.

Q. And the men are willing to go to Bristol Bay on the same conditions as Seattle, are they not?

A. The men here will go to Bristol Bay on the 1939 agreement.

By Mr. Madison:

Q. 1940 he asked. You said they would go on the same. You mean that Local No. 5 will go on the same conditions as Local No. 7?

Mr. Resner: The same wage conditions.

By Mr. Madison:

Q. The same conditions and contract? I don't know whether they will or not. Will you?

(Testimony of Morris Whaley.)

A. (Mr. Whaley) What was the question again?

By Mr. Resner:

Q. Mr. Madison, you can ask him that. I want to ask him this. What conditions would your people go to Bristol Bay on? That is the question I want to ask you.

A. Well, 1939.

Q. 1939 San Francisco agreement?

A. That is right.

Q. But nobody is going from San Francisco to Bristol Bay, so far as you know?

A. We have been notified to the effect they are not going.

Q. That the operation is off.

A. (No answer.)

By Mr. Madison:

Q. Now, I will ask that question. Will your men go to Bristol Bay on the same conditions as the Seattle 1940 agreement?

A. As ultimately signed in 1940?

Q. Yes?

A. Well, I don't even know what they signed up there.

Q. Has there been any discussion about going on those conditions that you have heard?

A. Well, that was the whole contention was to sign a coastwise agreement.

Q. Then, you don't know whether they will go on that basis or not, because you don't know what the conditions are?

(Testimony of Morris Whaley.)

A. As of 1940? No, I don't.

Q. Let me ask you this. So far as in San Francisco the wage and working conditions of 1939, 1938, and 1937 they were substantially [58] the same for Bristol Bay as they were for Central Alaska?

A. Generally they are about the same.

Q. In other words, the same, substantially the same so far as San Francisco is concerned. Now, so far as people who went from Seattle were concerned, those who went to Bristol Bay and those who went to Central Alaska went on the same terms and conditions, didn't they?

A. No, wage differential between Central Alaska and Bristol Bay.

Q. There was a wage differential?

A. That is right.

Q. Now, so far as San Francisco and Seattle are concerned, so far as Local No. 5 and Local No. 7 are concerned, hasn't Local No. 7 always had a lower wage scale than Local No. 5?

A. For the southern, yes.

Q. For the southern. In other words, these operators here have had to pay higher wages than the Seattle operators?

A. They have in the past year.

Q. And isn't that true of Bristol Bay, too?

A. No. Bristol Bay wages are the same.

Q. Seattle and San Francisco wages are the same? A. Yes.

Q. And when we have been discussing it, the same is true of each year, 1939, 1938, and 1937?

(Testimony of Morris Whaley.)

A. Well, I would have to get the agreements for any thing but 1939. I know the 1939 wage agreements for Bristol Bay out of San Francisco and Seattle are the same.

Mr. Madison: That is all.

Referee Roden: Any further questions?

That is all.

Mr. Resner: Mr. Noland.

MR. WILLIAM NOLAND,

2772 Shasta Road, Berkeley, California, being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. You are a member of Local No. 5, Alaska Cannery Workers Union? A. Yes.

Q. You were a member of the Negotiating Committee this year? A. Yes.

Q. You were on the various meetings with Mr. St. Sure and Mr. Moore, with the Packers?

A. Yes.

Q. Will you answer this question in respect to the negotiations held? Is it your opinion the negotiations were held in good faith or not?

A. I would say from what I saw in the negotiations they weren't held in good faith. [59]

Q. They what?

A. They were not held in good faith.

Q. Why do you say that?

(Testimony of William Noland.)

A. In the first place, we introduced our 1940 contract here through a misunderstanding. At the first meeting Mr. St. Sure told us, "Well, I don't know a thing about the conditions in Alaska. I am unfamiliar with them and I will have to take this contract back to the Packers. But, in the meantime, we might run down through the clauses and compare them with 1939 wherein they were any changes."

And we did that. We asked him for another meeting and I would say, possibly, a week elapsed before we were called. Then, we discussed the 1940 contract again. The answers to the different sections in the different clauses was yes or no. There was no opportunity to discuss the merits of these clauses. And I would say that 80% of the answers were no. And evidence that we offered in argument in favor of these clauses, notes were taken on these, he said, "Well, I will have to take these back to the industry and get their answer on it. I am in no position to say whether it is acceptable or not." And so that was the result of the second meeting.

Then, we informed him that we weren't negotiating wages and working conditions in San Francisco. That would be carried on in Seattle. And that was perfectly agreeable to the industry. At further meetings, of course, we discussed nothing but Manning Scale and living conditions. And those were carried on agreeably. We had no difficulty in those negotiations at all. But I can say

(Testimony of William Noland.)

that in negotiations with other unions that negotiations were carried on in the same way as our first two meetings with them; that their answers in regard to any section or any clause was either yes or no, and negotiations were going on very slowly. And at the time they had issued a dead-line for Chignik and Karluk on the 3rd, with the dead-line of the 10th, they hadn't negotiated to any extent with any of the unions. And they gave them only seven days to reach agreements with about eight different unions in San Francisco; and they couldn't possibly meet with these different unions. And they didn't meet with them more than one time at any time in that one week. With the Ship Clerks and Stewards it might have been two meetings, I don't know, but it was practically impossible to reach an agreement with eight unions in a period of a week.

I would say, on that basis, negotiations were not carried on in good faith in San Francisco. [60]

Q. You have heard the testimony of Mr. Whaley and Mr. Rendon, who are also members of the Negotiating Committee? A. Yes.

Q. Can you corroborate the statements and testimony they have given? A. Yes sir, I can.

Q. Is there anything you want to add to what they have said?

A. Nothing I can think of, unless you want to ask a specific question?

Mr. Resner: Nothing at this time.

Any questions, Mr. Madison?

(Testimony of William Noland.)

Mr. Madison: Yes.

Cross Examination

By Mr. Madison:

Q. Now, you have been on this Negotiating Committee quite a bit, haven't you?

A. Well, just this one year.

Q. This is the first year you have gone up?

A. Yes.

Q. You say you were under the impression negotiations were not carried on in good faith?

A. Yes, sir. That is right.

Q. Did you express yourself to that effect at any of the meetings you attended?

A. I don't think so. I don't think I ever told Mr. St. Sure.

Q. Did you express yourself to any of the other members of the Committee to that effect?

A. Yes, sir.

Q. When?

A. Well, I would say so at numerous times. We met daily. I don't know how many times I said that, but the entire Committee had that general impression.

Q. Did you make a definite statement to that effect that you thought Mr. St. Sure wasn't carrying on his negotiations in good faith?

A. Yes, sir. I made that statement many times.

Q. Had Mr. St. Sure ever negotiated this type of contract before, so far as you knew?

A. He admitted, himself, that he had never negotiated a contract for Alaska Salmon Operations.

(Testimony of William Noland.)

He knew nothing about the industry. I believe, also, that the same statement will be found in a letter he wrote to us.

Q. Have you any reason to doubt the truth of that statement?

A. Well, if he makes that statement, why, I would be inclined to believe him. Why shouldn't I believe him?

Q. I don't know why you shouldn't believe him. I just ask you if you had any reason to doubt that statement?

A. No. [61]

Q. Then, you believe he did not know a great deal about this industry?

A. That is correct. He said he didn't.

Q. Now, as I understand it, wages and working conditions were to be negotiated in Seattle?

A. That is correct.

Q. And so far as you know, they were negotiated in Seattle?

A. Yes, sir.

Q. Did you attend any of the negotiations up there?

A. No, sir.

Q. Have you got any impression as to whether Mr. Van Hovenberg and Mr. Ellsworth conducted their negotiations in good faith?

A. The only communications we received from up north stated on numerous occasions negotiations up north were not being carried on in good faith, and they were using stalling tactics. We have letters to that effect from up north.

Q. Yourself, you weren't present at any of these meetings up there?

A. No.

(Testimony of William Noland.)

Q. Now, the matters you discussed down here with Mr. St. Sure were matters relating to the Manning Scale, were they not, primarily?

A. That is true, other than the first two meetings which I attended at that time which did discuss the proposed 1940 agreement. That was just on two meetings, otherwise.

Q. You testified the major discussion down here, the major things in discussion, were the Manning Scale?

A. Manning Scale and living conditions.

Q. Did you have any particular disputes about the Manning Scale?

A. Well, I would say in our discussions with Kellogg, Jones, and Halsey of Red Salmon, I would say we were very successful. There were no disagreement. We more or less orally agreed to a Manning Scale, but nothing ever definite was given to us.

Q. You had no difficulty at that time reaching an agreement. A. No.

Q. I see. It wasn't definite, they more or less orally agreed?

A. And said they would seriously consider the changes we proposed in their proposed Manning Scale.

Q. What else was discussed down here with Mr. St. Sure and Mr. Moore?

A. Of course, we did discuss a memorandum of agreement.

Q. Outside of that? A. Nothing else.

(Testimony of William Noland.)

Mr. Madison: No further questions.

Mr. Resner: That is all. [62]

I want to call Mr. Vegen.

MR. ANDREW VEGEN,

49 Clay Street, San Francisco, California, being
duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. Will you give us your name and address,
please?

A. Andrew K. Vegen, 49 Clay Street, San Francisco.

Q. Mr. Vegen, you are the Secretary of the
Alaska Fishermen's Union?

A. That is right.

Q. That represents fishermen all up and down
the west coast who fish in Alaska from season to
season?

A. Yes.

Q. And you have been Secretary of the Union
for how long?

A. Since 1934.

Q. And during the different seasons when yearly
contracts have been negotiated have you done the
negotiations, among others, for your union?

A. Yes. We have a Committee elected from the
members and, of course, I always go along with
them.

Q. You are always on the Committee?

A. Yes.

(Testimony of Andrew Vegen.)

Q. You were on the Committee this year?

A. Yes.

Q. Now, as I understand it, there are a number of unions which send men to Alaska every year from the coast states? A. Yes.

Q. Your union, the Fishermen's Union, Alaska Cannery Workers Union, Maritime Cooks and Stewards, Firemen, Sailors, and all the other unions? A. Yes.

Q. And each of them carry on their separate negotiations with the operators? A. Yes.

Q. And then they deal collectively, do they not, through the District Councils of the Maritime Federation of the Pacific?

A. Yes, we have done that for the last few years.

Q. And you did that this year? A. Yes.

Q. Now, with respect to the negotiations carried on by your union, with the Packers, can you give us your opinion as to whether or not these negotiations were carried on in good faith or not?

A. Well, I will say it wasn't.

Q. It was not? A. It was not.

Q. And what do you base that opinion on? [63]

A. Well, probably the reason I don't think the companies had any intention to operate, that is, companies in San Francisco.

Q. Can you tell us why you came to that conclusion?

A. Probably different reasons for that. One is the Bureau of Fisheries put some very drastic re-

(Testimony of Andrew Vegen.)

restrictions on the regulations up there. They closed part of the fishing grounds and added some more closed periods during fishing time, you see; so, it would make it kind of unprofitable for them to operate it this year.

Q. You have reference to the regulations put out by the Secretary of Interior? They are in evidence here. During 1939 and 1940 the closed season, closed areas and restricted fishing weeks?

A. Yes.

Q. And the opinion you are expressing here is this curtailment would have increased the cost of operations and, therefore, you would not operate for that reason?

A. I look at it this way. The companies, at least, look at it this way. They wouldn't be able to go up and put up a good pack because of the restrictions on the regulations; and when you close part of the fishing grounds you can't fish there, and put an added twenty four hours a week where you couldn't fish, naturally! And it is a *cycle year*, anyway. What you call a *cycle year*. It is a poor year expected this summer.

Q. This year would be a poor year?

A. Yes, that is what they expect.

Q. You, yourself, fished in Alaska for many years, did you not, Mr. Vegen?

A. Twenty-five years.

Q. And this is what they would consider to be a poor year?

A. Well, what they call a *cycle year*—comes around every fifth year.

(Testimony of Andrew Vegen.)

Q. Five years ago the fishing grounds were closed in Alaska, were they not?

A. Practically, yes. It was very limited in 1935.

Q. That was because of regulations put out by the Bureau of Fisheries? A. Yes.

Q. And at that time was any operations undertaken by San Francisco?

A. No. They sent some ships up there from San Francisco, but it was very little fishing. The season was open up there on the 4th of July—and only one company packed, Libby, McNeil, from Seattle.

Q. But the San Francisco operators didn't put up any pack that year??

A. Put up a few cases, but not much. They were not prepared to do canning.

Q. This year with regard to the restrictions on the fish another cycle you speak of is similar to that of five years ago? [64]

A. They expect a similar season—and with the added restrictions put on the regulations they couldn't see any way of making any money, putting up any pack to compare with anything.

Q. Comparing negotiations of your union with previous years, could you point to anything in comparison with those negotiations on the question of good faith in intention to go to Alaska this year?

A. Well, of course, negotiations was carried on on a different way altogether this year. We used to negotiate the agreement with Mr. Tichenor.

Q. Who is he, Mr. Vegen?

(Testimony of Andrew Vegen.)

A. Vice President of the Alaska Packers Association.

Q. Last year you negotiated with him?

A. Yes.

Q. As a matter of fact, you have always negotiated with Mr. Tichenor for his company?

A. Yes.

Q. Go on.

A. And, of course, this year it was different. A Committee was negotiating for the Packers. They have had no authority to promise you anything, that is, in any way or form. They always brought out they couldn't even discuss anything that increased the cost of operations.

Q. Did they try to cut down your conditions this year so far as fishermen are concerned?

A. They did.

Q. In what way?

A. After meeting for a few times we finally received an ultimatum demanding we take a 16½% cut in fish prices, and similar reductions in the percentage for the men that work ashore. And they also demanded that we take out many *classes* out of the working agreement which we had for years which were important. So, of course, the men turned it down and settled the negotiations here in San Francisco.

Q. I understand some of your men are going from Seattle this year?

A. Oh, yes. We reached agreement with the conference in Astoria, Portland, and Seattle.

(Testimony of Andrew Vegen.)

Q. Would that same agreement be satisfactory to your San Francisco fishermen?

A. We got the same wages for the men, yes.

Q. You finally got what you asked for?

A. We accepted right away.

Q. But they are not taking the San Francisco Fishermen?

A. Not with the exception of very few that used to go and fish with those people up there from year to year.

Q. Well, perhaps you don't understand the question I am making. As I understand it, most of your fishermen this year are your fishermen who live up in the northwestern states who are going to Alaska this year? [65] It other words, your fishermen who live around the bay area here are not going this year?

A. No. Not with the exception of probably 25 to 30.

Q. How many fishermen have you in the bay area who are not going this year?

A. Well, with the fishermen we got I couldn't say exactly. Approximately about 950.

Q. And the reason they are not going? Can you give us the reason why they are not going?

A. They are not going because the conference closed the operations.

Q. And your union didn't declare any strike or anything of that kind? A. No, no.

Q. Can you give us anything else on this ques-

(Testimony of Andrew Vegen.)

tion of good faith with respect to these negotiations that may have been brought up?

A. Well, the reason I think the conference closed operations, of course, they didn't think they could make enough money on it. There is probably another reason, they got good money for chartering out the ships, could make money that way—probably sure money instead of taking chances going to Alaska.

Q. Do you know some of the ships that have been chartered? A. Yes.

Q. What ships? A. The Steamer Glacier.

Q. The Glacier has been let out. Who owns the Glacier? A. The Alaska Salmon Company.

Q. That has been let out on charter?

A. Yes.

Q. What other ships?

A. Then there is the Dellaroth.

Q. Who owns that?

A. And the Bearing. That is Alaska Packers Association.

Q. They have been chartered, too?

A. Yes. These ships were chartered out a long time before the fishing season.

Q. These ships were chartered before the season, even?

A. Oh, a long time ago, several months before.

Q. How many ships were usually used in San Francisco by the Alaska Packers?

A. I can't tell you off-hand. About nine, I think. I am not sure about that.

Q. Mr. Resner: I think that is all.

(Testimony of Andrew Vegen.)

Any questions, Mr. Madison? [66]

Mr. Madison: Yes.

Cross Examination

By Mr. Madison:

Q. You didn't attend any of the negotiations at Seattle, did you? A. No.

Q. Were you present when the negotiations were held here between the Alaska Cannery Workers Union and Mr. St. Sure and Mr. Moore?

A. No. We always had appointments, you know, separate.

Q. You always had separate appointments? And you weren't present when Mr. St. Sure was present with these other people? A. No.

Mr. Resner: He just testified as to his negotiations with his own union.

By Mr. Madison:

Q. You are speaking then with regard to your own experience, so far as your negotiations with Mr. St. Sure? A. That is right.

Q. And, I think, you said one of the differences you noticed was that heretofore you had always negotiated with Mr. Tichenor? Is that correct?

A. Yes.

Q. And you said Mr. St. Sure didn't appear to have any authority but Mr. Tichenor did. Is that right?

A. That is what he told those of us, because after we had a discussion on different things, well, he said, he would have to take it back to the companies and they would let us know.

(Testimony of Andrew Vegen.)

Q. You described that as a point of bad faith?

A. I didn't call it—the way they handled this. For the reason out of the skies come the ultimatum.

Q. When you negotiated with Mr. Tichenor did he always give you a final answer on all the questions that were discussed?

A. Yes. He used to give us a different proposition to take back to the membership and if they accepted it O.K. If it was rejected we take it back to him and we discuss it some more, and finally.

Q. Sometimes did Mr. Tichenor take it back to his people and discuss it with his people?

A. Yes.

Q. You didn't think that was bad faith on his part, did you? A. No.

Q. He didn't think it was bad faith on your part because you discussed with the men, did he?

A. The reason I think it was bad faith was this. We didn't have a chance to meet often enough.

Q. Did you ask him for some meetings he refused to meet with you?

A. No. We were always sitting there ready, waiting there for several weeks, and had no call. [67]

Q. You were waiting for him to call up, was that it? A. Well, that was the agreement.

Q. And he might have been waiting for you to call him up?

A. No. That was understood by Mr. St. Sure whenever he had a chance he would call us.

(Testimony of Andrew Vegen.)

Q. Whenever he wanted to accept your proposition to give you a ring?

A. Yes. In fact, it was done in such a hurry we didn't have a chance to give him our proposition.

Q. You never did give him a proposition?

A. Yes, because we got his proposition so late that we didn't get a chance to give him ours.

Q. Now, I understand you to say one of the reasons you feel these negotiations were conducted in bad faith was because you felt these restrictions on them made it unprofitable for them to operate up there?

A. Well, you know, for some reason or other the way they went through this negotiations was a blind, way it look to me.

Q. They were going through a blind; but one of the reasons you thought that was because there was the Bureau of Fisheries of the Department of Interior had put some restrictions on them, is that it? A. Yes.

Q. And they felt it was kind of hard for them to make any money up there?

A. I felt that was one of the reasons.

Q. And you felt under the conditions that existed last year, possibly, they couldn't have made any money up there? A. Possibly.

Q. You thought that?

A. I feel sure that is the reason.

Q. And did you offer to reduce the wages of the men in any way so as to permit them to go and operate at a profit? A. No.

(Testimony of Andrew Vegen.)

Q. You did not, did you? A. No.

Q. You asked for the same as last year?

A. As last year and the year before.

Q. Yet you know they couldn't make any money?

A. I say this. Nobody knows what you are going to make in Alaska; fish is in the water and you don't know whether you going to catch them. Probably be a good season this year, too. Nobody knows anything about it. It is possible.

Q. In other words, you think when you are answering Counsel's questions no, but when you are answering mine there is plenty of fish in the sea and may be you can make a profit, is that it?

A. I will say this. If it turns out to be a bad season they couldn't make any money on it. I will agree with you there. But, according to the limit of [68] operations, it is possible it will be a good year this season. It was closed up in 1935 to build up this run in 1940.

Q. You think, now, it will probably be a good year? A. Yes, nobody can tell.

Q. Nobody can tell anything about it?

A. Not before the season is over.

Q. In spite of this being a cycle year, as you say, it will probably be a fine year?

A. That is Counsel's argument, of course, we expect a poor season.

Q. Whose argument?

A. The companies argument, negotiators for the company; but we argue on account of the restric-

(Testimony of Andrew Vegen.)

tions on the fishing operations in 1935 it should be a good season.

Q. You think this would have been a fine season?

A. I got an idea probably it would be.

Mr. Madison: That is fine.

Mr. Resner: I don't think it is exactly necessary, Mr. Madison to assume that kind of attitude toward the witness? I would like to register my objection.

Referee Roden: Let us proceed.

Mr. Madison: I have no further questions.

Examination by Referee Roden:

Q. Now, Mr. Vegen, you say the Alaska Packers chartered some of their ships?

A. They had chartered two of them.

Q. That happened sometime ago?? A. Yes.

Q. The ships they chartered are still running around? A. Yes.

Q. And how many ships did they send up north this year, do you know?

A. They didn't send any ships here, from here, this year.

Q. They are going to operate on Bristol Bay, aren't they, some of the canneries?

A. They are operating from up north from out of Astoria, Seattle.

Q. And when did you fish up there for the last time? A. 1933 is the last fishing season.

Q. Now, you are well acquainted with the regulations that were in force in 1935 in Bristol Bay?

A. Yes, that is the year the Bureau of Fisheries curtailed operations practically altogether.

(Testimony of Andrew Vegen.)

Q. The whole bay was closed, wasn't it?

A. Yes. [69]

Q. And suddenly it was opened?

A. They opened up, I think, on the 4th of July—just a hundred boats, or something like that, very limited operations.

Q. No one knew except one or two that the Bay was going to be open, isn't that true?

A. I guess they all knew it. Probably some had more information than others.

Q. Referee Roden: I think so, too.

Redirect Examination

By Mr. Resner:

Q. Mr. Vegen, in your response to my question, when you stated on this question of bad faith or good faith, on these negotiations that it was your opinion that the operators were not going to have a profitable season were you reporting what they told to you or your own opinion?

A. Well, of course, remember they reminded us of that several times. That according to the restrictions and stuff there that it would be impossible for them to consider any raise in wages, or anything like that.

Q. In other words, it was the negotiators for the cannery statement to the union on account of the curtailment they didn't expect a good year?

A. No—yes.

Examination by Referee Roden:

Q. Did you ever hear anything about a proposition that there would only be two or three canneries

(Testimony of Andrew Vegen.)

operating in Bristol Bay this year on account of the curtailment?

A. No. I never heard it. The Bureau of Fisheries announced the regulations the first of January, and they are allotted 780 boats for Bristol Bay District; and we tried to have them reconsider and let us have more boats up there, but we didn't get anywheres with it. We also tried to get some of the restrictions, like this extra closed weekly period and opening of the fishing grounds, but we didn't get anywheres with it.

Q. What I am trying to get at is this. Did the canneries after they learned what the regulations were, did they decide to curtail their operations and carry it on as a kind of combine? Combine their catches, use all their fishermen, and simply supply one or two plants in there?

A. Well, I think it was the idea between the cannerymen that they were in favor of curtailment, that is, the big majority of them was in favor of curtailment; but they were not in favor of the [70] restrictions. That is, some of the companies operate two canneries in the same District or in the same river, like. They are decided early last winter they were only going to operate one cannery there.

Q. About the time these negotiations were going on do you know how the Salmon market was? The canned salmon market, I am talking about.

A. You mean, the price?

Q. Yes, the price?

(Testimony of Andrew Vegen.)

A. Well, the market price is fairly good.

Q. Bristol Bay practically catches only reds, isn't that true?

A. Get a few pinks, too. Bristol Bay is practically all reds.

Q. Do you know how the price of reds was, say, during March and April? Beginning of May, this year? Compared with the prices of last year?

A. Well, the prices is a little better this year than last year, particularly the pink salmon.

Q. I am talking about the reds.

A. A little better, not much difference.

Q. Do you know how the supply was? In other words, the carry over? Do you know how much they carry over now? I am talking about reds.

A. Well, of course, I don't know exactly how much they are, but they have less salmon on hand this Spring than last year, and for several years past.

Q. I think you are mistaken?

A. I don't think so.

Q. Well, I looked that up last week in the trade journals and they seem to say the opposite. That is what I am trying to get at—more Reds on hand than there was last year at this time.

A. I was told here by somebody that is supposed to know that, this was the first part of the year, that they had a hundred and one million and thirty five thousand cases on hand. That is in January. That is, one of the operators told me that.

(Remarks were made off the record.)

Referee Roden: That is all.

Mr. Resner: Mr. Referee, there are several other witnesses and a number of letters I want to put in. I don't know, perhaps the Reporter wants a little rest at this time? We have been going pretty steady. Perhaps we can recess?

(At 3:30 p.m. a five minute recess was taken.)

[71]

Referee Roden: Are you Gentlemen ready to proceed?

Mr. Resner: We are ready. I want to direct the Commission's attention to this fact, that the names of the Claimants, apparently, are not in the record. I have here the names of all those Claimants who have turned their names into the Union as having filed claims, and copies which the Union sent to the Commission in Juneau asking for a determination on the claims.

And, also, the names of the Claimants, I would like to offer these names at this time and have them be made a part of the record at the beginning of this hearing, applying to these Claimants and any others in this same class or group whose names subsequently may come to our attention as having claims rejected. In other words, the only people we represent at this hearing are members of Local No. 5 of the Alaska Cannery Workers Union.

Mr. Madison: In other words, these Claimants are the best evidence, and this is merely a tabulation you prepared and represent as being a correct tabulation of claims having been filed and rejected on account of the labor dispute?

Mr. Resner: In other words, I want this record to appear as applying to these particular Claimants, even though this hearing is being conducted by the Union for their benefit.

Mr. Madison: As long as it is very definitely understood by not objecting any further to the introduction of this list that we don't waive in any way any of the rights we would have to resist these claims by virtue of their failure to file or by virtue of any of the other non-compliances that may have occurred.

Mr. Oliver: Our position is the same as Mr. Madison's.

Referee Roden: Yes.

MR. SAM YOUNG,

947 Stockton Street, San Francisco, California, being first duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. Your name is Sam Young and you are the Secretary of Local No. 5 of the Alaska Cannery Workers Union, San Francisco?

A. That is right.

Q. You filed? You sent a letter and list of Claimants for benefits to the Alaska Unemployment Compensation Commission at Juneau?

A. That is right, sir.

Q. From time to time, you sent a series of letters?

(Testimony of Sam Young.)

A. Yes, sir, by airmail.

Q. I show you a copy of the letter of May 14th, Mr. Young. That letter was the letter you sent to the Commission on the 14th? (Indicating)

A. Yes.

Q. Is that the first time you sent one?

A. I sent many of them.

Q. All the others were just the same, weren't they? A. Yes.

Q. And together with the letter you sent a list of Claimants.

A. Yes. Those are the copies. I sent the original. By Mr. Madison:

Q. Do I understand that these names you sent in were with letters like this? Each one of these? (Indicating)

A. That is right, attached to it.

By Mr. Resner:

The same letter was sent, was it not?

A. The same letter, yes.

Q. And to each letter?

A. The copy to it.

Q. That was the first letter, was it not, Mr. Young? May 14th?

A. There is an earlier letter, yes.

Mr. Resner: An earlier letter sent by my partner, Mr. Anderson.

I am going to introduce it, too. This is a carbon of the letter sent to the Commission. That was the first letter, and this one he sent was the second one. (Indicating)

(Testimony of Sam Young.)

I want to offer the letter of May 14th by Mr. Young in evidence.

Referee Roden: All right.

Mr. Resner: And at this time the list of Claimants whose names appear. (Indicating)

Mr. Madison: May I ask at this time the pertinence of this?

Mr. Resner: Yes. I want to be sure this hearing applies to these particular Claimants.

Mr. Madison: In other words, the same statement you made a while ago, this is just a statement of the people you represent at this hearing?

Mr. Resner: That is right. We represent the Union and, also, the individual members and Claimants. And I would like to ask permission at this time to introduce later, even after the conclusion of the hearing if necessary, the names of additional Claimants? [73]

Of course, this is all a matter of record before the Commission.

Mr. Oliver: Additional Claimants who may in the future file claims?

Mr. Resner: Members of our Union who may file claims later in the season, yes; who may have been disqualified on this account. There may be some Claimants whose names I don't have. Probably some put in their claims but didn't report it to the Union.

Mr. Oliver: Thus far you have only introduced Claimants who have filed claims, members of the Union who have filed claims, and been rejected.

(Testimony of Sam Young.)

Mr. Resner: But the point is if any future claims are rejected on the point this is a labor dispute; there is no point on going through this whole hearing again. In other words, I think, whatever should apply here should apply to other Claimants who lost the 1940 season.

Referee Roden: That will be a point to be decided by the Commission, I guess. I can only take into consideration claims filed up to now.

Mr. Madison: As I understand it, the only pertinence of this list is a declaration by Counsel as to who he represents.

Referee Roden: Exactly, and whose claims have been filed.

Mr. Madison: Now, the best evidence is whether these claims have been filed or not, and this won't change that at all.

Mr. Resner: Its sole purpose is to identify the Claimants.

Mr. Madison: Any names on there that haven't filed claims—this won't change that?

Mr. Resner: No.

Mr. Oliver: Is that the purpose?

Mr. Resner: I intend, also, to introduce this letter of May 11th, if you Gentlemen have no objection?

Mr. Oliver: Is that pertinent to the list? [74]

Mr. Resner: Yes, because this is referring to the claim of Frank Aragon and out of which all these subsequent letters stem.

(Testimony of Sam Young.)

Mr. Madison: Now, I understand it has only been introduced to prove other letters was sent and is not any evidentiary matter. If that is the proposed offer, I don't raise any objections, simply to prove that letter enclosed certain names. Then, I have no objection.

Referee Roden: Let me see that letter?

Well, I know that letter is on file up there because I have a copy of it, myself.

Mr. Resner: Well, I want to introduce that in evidence.

Mr. Madison: For the limited purpose specified.

Mr. Resner: Now, with these other letters, this is purely for the purpose of identification and by reference to the originals on file at the Commission's Office in Juneau, letters similar to May 14th were sent on May 17th, 21st, 24th, and 31st, June 7th, June 10th, and June 15th. And attached to these letters were the names of various Claimants whose names have already been introduced. This is merely for the purpose of identifying these Claimants with the original claims on file with the Commission.

Mr. Oliver: Those lists you introduced, you can't tell from one letter whether a particular list was attached to it or not.

Mr. Resner: It doesn't make any difference.

Mr. Oliver: Except as to the time when the claim might have been filed?

Mr. Resner: But the claims would all run from the same time, anyway, running from the opening

(Testimony of Sam Young.)

of the season. So, it doesn't make any difference when the claim was filed.

Referee Roden: All right, proceed.

By Mr. Resner:

Q. You are the Secretary of this Union, Mr. Young? A. Yes.

Q. And, as such, you received the mail, correspondence, did you not, communications addressed to the Union? A. That is right, sir.

Q. And, I am going to show you a series of letters and ask you if you received them, then, after that, introduce them in evidence here. [75] The first one is March 5th, from the Alaska Salmon Industry, signed by Mr. Moore. Do you Gentlemen want to see this? (Indicating) You received that letter, Mr. Young?

A. Yes, sir.

Mr. Resner: This is a letter from the Alaska Salmon Industry, March 5th, signed Edward W. Moore, addressed Alaska Cannery Workers Union.

And I want to draw particular attention to the first sentence which says, "As your organization has previously been advised, contracts between yourself and the Alaska Salmon Packers have been terminated."

And I want to offer that at this time.

(Received in evidence as Claimant's Exhibit No. 6.)

(Testimony of Sam Young.)

CLAIMANT'S EXHIBIT No. 6

File

#6

Alaska Salmon Industry, Inc.

230 California Street

San Francisco, California

March 5, 1940

Alaska Cannery Workers Union

32 Clay Street

San Francisco, California

Gentlemen:

As your organization has previously been advised, contracts between yourselves and the Alaska salmon packers have been terminated.

The negotiations for contracts for the 1940 season will be handled by this office through Mr. Paul St. Sure, for the Alaska canners operating out of San Francisco. Our offices are located in Rooms 305-306 at 230 California Street, and our telephone is Yukon 0452. Will you please call and arrange for a mutually convenient meeting time in order that negotiations can begin without further delay?

Very truly yours,

ALASKA SALMON INDUSTRY, INC.

By EDWARD H. MOORE

EDWARD H. MOORE

EHM:EG

2 P. M.

3/11/40

(Testimony of Sam Young.)

Q. You received that letter, Mr. Young?

A. That is right.

Q. I want to offer in evidence at this time the letter of March 8, 1940, signed by Mr. Paul St. Sure, from the Alaska Salmon Industry to the Alaska Cannery Workers Union. I want to draw particular attention to the following sentence in Paragraph 1. "Your attention is drawn to the fact that such authority is strictly limited to negotiations regarding a contract for the 1940 season only without any representation whatsoever that any of these canners will or will not operate in Alaska this season, and that such negotiations can be directed only to matters immediately involving a possible 1940 contract without reference to any unadjusted matters arising out of the previous collective bargaining agreements."

I want to offer that at this time.

(Received in evidence as Claimant's Exhibit No. 7.)

(Testimony of Sam Young.)

CLAIMANT'S EXHIBIT No. 7

File

#7

(Cut)

Alaska Salmon Industry, Inc.

Dexter Horton Building

Seattle U. S. A.

San Francisco Office

230 California Street

San Francisco, California

March 8, 1940

Alaska Cannery Workers Union

32 Clay Street

San Francisco, California

Gentlemen:

Enclosed herewith is a statement from Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company indicating the extent to which Alaska Salmon Industry, Inc., is authorized to deal with you on their behalf. Your attention is drawn to the fact that such authority is strictly limited to negotiations regarding a contract for the 1940 season only, without any representation whatsoever that any of these canners will or will not operate in Alaska this season, and that such negotiations can be directed only to matters immediately involving a possible 1940 contract, without reference to any unadjusted matters arising out of previous collective bargaining agreements.

Should you desire to present any claims arising

(Testimony of Sam Young.)

out of operations for 1939 or prior years, you are requested to take them up directly with Mr. Fleager of Alaska Salmon Company, Mr. Peterson of Red Salmon Canning Company, or Mr. Everett Mathews of the firm of Pillsbury, Madison and Sutro, on behalf of Alaska Packers Association, as the case may be. These gentlemen are already well acquainted with problems which have arisen under the previous contracts, and inasmuch as they have already had under consideration a number of such claims, it is the decision of these companies that they should follow such disputed matters through to their final settlement.

This office, on the other hand, has had no experience either with the previous contracts in general, or with the specific disputes which have arisen under them. We are prepared only to consider possible arrangements for the coming season. Will you, therefore, please present any such claims immediately to the parties above named for further discussion.

Since the companies individually are ready to meet with you concerning all prior claims, we believe it is obvious that all unsettled matters for previous seasons can be adjusted through proper legal channels without depriving either party of a full and fair determination. Since this right of adjustment exists, and since the time factor is so vital to all parties concerned, we trust that you will not continue to take the position heretofore declared by you to the effect that the final

(Testimony of Sam Young.)

settlement of all these separate claims in a manner satisfactory to you is a condition precedent to any 1940 negotiations. Such a position might jeopardize all possibility of operation, for it would require one party or the other to face forfeiture of a right to a full hearing under threat of a refusal to bargain.

Consequently, we will appreciate your advising us in writing at your earliest convenience concerning the position which your group proposes to take in the light of this communication.

As we have already informed you, we are ready to negotiate, as herein set forth at your convenience.

Yours truly

ALASKA SALMON INDUSTRY, INC.

J. PAUL ST. SURE

J. PAUL ST. SURE

JPSS.OB

Enclosure

[Printer's Note: Claimant's Exhibit No. 8, apparently overlooked here, is identically the same as Respondent's Exhibit V, set out in full at page 378 of this printed record.]

You received that letter, Mr. Young?

A. That is right.

Mr. Resner: This is a letter of March 8, 1940, from the Alaska Salmon Industry, signed by Mr.

(Testimony of Sam Young.)

Tichenor for the Alaska Packers, Mr. Fleager for the Alaska Salmon Company, and Mr. Peterson for the Red Salmon Company, notifying the union, "Mr. St. Sure and Mr. Moore are authorized to negotiate with your union for collective bargaining agreements covering the 1940 Salmon canning season on behalf of the undersigned canners.

"This authorization is without any representation whatever that any of the undersigned canners will or will not operate in Alaska during the 1940 season." [76]

I want to offer that letter in evidence.

(Received in evidence as Claimants' Exhibit No. 9.)

CLAIMANT'S EXHIBIT No. 9

1

#9.

Alaska Salmon Industry, Inc.
230 California Street
Telephone Yukon 0452
San Francisco, California

March 8, 1940

Alaska Cannery Workers Union
32 Clay Street
San Francisco, California

Gentlemen:

This is to advise you that Alaska Salmon Industry, Inc., through Mr. Paul St. Sure and Mr. Edward H. Moore, are authorized to negotiate with your organization for a collective bargaining agreement covering the 1940 salmon canning season on

(Testimony of Sam Young.)

behalf of the undersigned canners. This authorization is without any representation whatsoever that any of the undersigned canners will or will not operate in Alaska during the 1940 season.

This authorization is limited to negotiating matters directly involved in establishing a collective bargaining agreement for the 1940 season only, or such other matters as may be authorized specifically, and does not empower the above named parties to act upon any claims or other matters which may still be in dispute under contracts existing in 1939 or years prior thereto.

ALASKA PACKERS
ASSOCIATION

By A. K. TICHENOR

ALASKA SALMON COMPANY

By H. A. FLEAGER

RED SALMON CANNING
COMPANY

By G. B. PETERSON

Q. I want to direct your attention to that letter, Mr. Young? A. Yes.

Q. That was received by your union?

A. That is right.

Mr. Resner: This is a letter from the Alaska Salmon Industry dated April 3, 1940, signed by Mr. Paul St. Sure. I want to direct particular attention to Page 5 of this letter, paragraph 1,

(Testimony of Sam Young.)

applying to the Alaska Cannery Workers Union.

“This agreement for operations out of San Francisco will be negotiated on a uniform basis at Seattle, with provisions to apply to all operations undertaken from California, Oregon, and Washington. The San Francisco Operators have authorized the Alaska Salmon Industry, Incorporated, at Seattle to represent them in these negotiations which are now in progress. In the event satisfactory agreements are reached for Central Alaska and those operations are undertaken, and in the event Bristol Bay operations are undertaken on agreement basis, cannery workers will leave on May 22nd. Any agreements are contingent upon operations.”

I offer this.

(Received in evidence as Claimant's Exhibit No. 10.)

Q. You received that letter? A. Yes.

Mr. Resner: This is a letter dated April 11, 1940, from the Alaska Salmon Industry, signed by Mr. St. Sure. It is addressed to the Unions Concerned. I want to direct particular attention to the first paragraph, which reads:

“On April 3, 1940, we advised you that if an expedition was to be undertaken to Karluk this season all arrangements for employment would have to be completed on or before April 10, 1940. This letter is to advise you employment agreements are not completed by the date specified and, therefore, operations at Karluk will not be undertaken.”

(Testimony of Sam Young.)

I offer this in evidence.

(Received in evidence as Claimant's Exhibit
No. 11.)

CLAIMANT'S EXHIBIT No. 11

#11

Alaska Salmon Industry, Inc.

230 California Street

San Francisco, California

Telephone YUkon 0452

April 11, 1940

To the Unions Concerned:

On April 3, 1940, we advised you that if an expedition was to be undertaken to Karluk this season, all arrangements for employment would have to be completed on or before April 10, 1940. This letter is to advise you that employment agreements were not completed by the date specified, and therefore operations at Karluk will not be undertaken.

Following our letter of April 3rd we met with all unions that were willing to negotiate with us, and attempted to reach an agreement with each. The Machinists Unions and the American Communications Association declined to negotiate. Since these latter organizations are affiliated with the Maritime Federation of the Pacific, and since the Federation has taken the position that all unions of that group must be satisfied before any will sign, a settlement was impossible even though other individual union agreements had been reached.

In addition, the Alaska Cannery Workers'

(Testimony of Sam Young.)

Union, which withdrew from negotiations in San Francisco on April 2nd and subsequently agreed to be bound by an agreement now being negotiated in Seattle for all 1940 operations, declined to enter into a memorandum agreement based on the results of the Seattle negotiation. The representatives of this union suggested a memorandum agreement based on 1937, 1938 and 1939 San Francisco agreements, and likewise requested that some of their members be taken to Alaska on the April voyage, despite advices as early as last September that this would not be done. Subsequently, on the evening of the 10th, the Cannery Workers' Union informed us that they preferred to await the outcome of negotiations at Seattle before signing any memorandum, despite the fact that the sole purpose of the voyage to Karluk and Chignik schedules tentatively for next week is to prepare for cannery operations at those places.

On April 9, 1940, we received a letter from Revels Cayton, Secretary of District Council #2 Maritime Federation of the Pacific, advising us that although our proposals were unacceptable to all unions of that group, nevertheless all of the unions were "ready, able and anxious to continue" to complete contract arrangements. The fact that at least two of these unions still refuse to meet with us would seem to cast doubt upon the sincerity of this statement.

Mr. Cayton likewise states that the unions he represents feel that the Alaska Salmon Industry,

(Testimony of Sam Young.)

Inc., is endeavoring to "force through a contract" by "delivering ultimatum after ultimatum". Any force which is present in the situation is the force of circumstances resulting from the time factor involved in the established dates for the fishing season.

Mr. Cayton likewise protests against the inadequacy of certain proposals made by us, and specifies three.

The first is the elimination of the \$75.00 penalty clause in the Fishermen's agreement, which has been in effect for many years. This clause was a proper one to protect the Fishermen against arbitrary abandonment of expeditions after the men had been signed on, but in recent years it has operated to impose a penalty on employers for conditions beyond their control, since expeditions can be tied up by job action of other unions. We would have no objection to continuing the penalty clause to protect the Fishermen against cancellation of employment for reasons within our control.

The second is an alleged attempt to destroy the 8 hour day enjoyed by the Marine Cooks and Stewards. At the time Mr. Cayton's letter was received we were meeting with this organization and stipulated that the 8 hour day was not to be extended. Our counter proposal did not contemplate any encroachment on this condition.

The third is an alleged endeavor to deprive the Cannery Workers of 35 days work in 1940. Last

(Testimony of Sam Young.)

September this union was notified that its members would not go to Alaska on the Spring voyage, despite the fact that last minute demands in 1939 had resulted in such employment, although the services of these workers were not required until 35 days later.

Mr. Cayton further suggests that if the unions could meet with the operators on other than an industry basis, the unions would hope to "hammer out an agreement". The Industry desires to negotiate, rather than to be "hammered".

In connection with charges of delay and bad faith, we believe the record of attempted negotiation will speak for itself.

Pursuant to our letter of April 3rd, we desire to again call to your attention the sailing schedule set forth therein. If an operation is to be undertaken at Chignik, agreements must be reached on or before April 12th. In this connection we reiterate our offer by previous letters and telegrams that we are willing to meet and negotiate with you and to consider or bargain concerning possible arrangements for employment for Chignik in accordance with sailing schedule heretofore specified.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By J. PAUL ST. SURE
J. PAUL ST. SURE

JPSS/OB

(Testimony of Sam Young.)

Q. You received this letter, Mr. Young?

A. Yes. [77]

Mr. Resner: This is a letter dated April 22, 1940, from the Alaska Salmon Industry, signed by Mr. Moore, addressed to the Alaska Cannery Workers Union, where it is stated: "Operation of Chignik and Karluk is abandoned because of inability to reach agreement with all the labor organizations involved within the time set forth in our letter of April 3, 1940."

I want to offer this in evidence at this time.

(Received in evidence as Claimant's Exhibit No. 12.)

CLAIMANT'S EXHIBIT No. 12

#12

Alaska Salmon Industry, Inc.

230 California Street

San Francisco, California

Telephone YUkon 0452

April 22, 1940

Alaska Cannery Workers Union

32 Clay Street

San Francisco, California

Gentlemen:

In response to your recent request, we are informing you by means of this communication that cannery operations of Alaska Packers Association at Chignik and Karluk for the 1940 season have been abandoned because of inability to reach agree-

(Testimony of Sam Young.)

ment with all labor organizations involved within the time set forth in our letter of April 3rd, 1940.

Yours truly

ALASKA SALMON INDUS-
TRY, INC.

By EDWARD H. MOORE
EDWARD H. MOORE

EHM/OB

Q. With respect to the position of the Union at this time, Mr. Young, or the position that it had all along on these operations from San Francisco, what conditions did they offer? On what conditions did they offer to go from San Francisco? A. You mean, the Packers?

Q. The Union?

A. Well, on the last meeting we decided if the Packers were willing to go we were willing to go on the 1939 San Francisco Agreement.

Q. 1939 San Francisco Agreement. That was the final offer you made to them?

A. That is right.

Q. Was that offer refused or accepted?

A. Well, it seems to be in the early part of it. It seems to be the trip was abandoned and that's all we heard of it.

Q. In other words, the trip was abandoned before you made that offer?

A. No, I won't say that. When we make the offer we have no reply from the negotiations.

(Testimony of Sam Young.)

Q. No reply was made to that offer?

A. That is right.

Q. No strike was declared by the Union?

A. No, sir.

Q. And you have had no workers from San Francisco in Alaska at all this season?

A. Not in my knowledge, no.

Q. The last time you had workers from your Local No. 5, here in San Francisco in Alaska was in the 1939 season?

A. That is right.

Q. And when that season was over they came back home, and haven't been working since?

A. Except some natives up there which belong to our organization work up there in their own ways.

Q. You have some native Alaskans, that is?

A. That is right.

Q. I am speaking about San Francisco?

A. None of them, no.

Mr. Resner: I think that is all. [78]

Cross Examination

By Mr. Madison:

Q. When was the 1939 of San Francisco Wages Agreement offer made?

A. Let's see, around about on our last meeting. Around about, I wouldn't say exactly what the date was.

Q. Was that meeting May 29th in Seattle?

A. That is right, about that.

(Testimony of Sam Young.)

By Mr. Resner:

Q. I referred to the San Francisco offer.

A. That is what I mean, yes.

Q. Mr. Madison is talking about Seattle. We are talking about two different things. When was that offer last made in San Francisco?

By Mr. Madison:

Q. No testimony was ever made in San Francisco?

A. Well, a telegram to prove the fact is in there.

Q. A telegram from whom?

A. 1939 Agreement. We sent it to the negotiations.

Q. Your own telegram? You sent it to the Negotiations Committee? A. That is right.

Redirect Examination

By Mr. Resner:

Q. Was an offer made by your San Francisco Committee to operate here in San Francisco offering to sign for the 1939 San Francisco wages?

A. That is right.

Q. And that is the date I want to get. Approximately when was that?

A. Well, I couldn't say off-hand, but I have the record there. But I couldn't say, except the date.

Q. What month? What week? Was it in March? April? A. Well, around in March, or.

Q. Latter part of March?

(Testimony of Sam Young.)

A. That is right.

Mr. Resner: I think that is when it was.

By Mr. Madison:

Q. May I see the telegram, please? He said he made the offer by the telegram.

Mr. Resner: They didn't make it by telegram to the Packers. This was instructions to the union committee—telegram to the union committee.

Mr. Madison: Well, may I see that? [79]

By Mr. Resner:

Q. Have you got it, Mr. Young?

A. (Indicating.)

Mr. Madison: It has no date.

By Mr. Resner:

Q. What date was that sent, Mr. Young?

A. I would say about four weeks ago or five.

Q. Is Mr. Woolf back in town yet?

A. I can't say, might or might not be, I can't say.

By Mr. Madison:

Q. Well, now, you say four or five weeks ago?

A. About.

Q. One of your Negotiating Committees was in Seattle, and you said the meeting was May 29th. Have you any other reason to believe than that it was May 29th?

Mr. Resner: We are talking about March, aren't we?

(Testimony of Sam Young.)

By Mr. Madison:

Q. Let me ask him the question. Let's get this clear, if we can. Do I understand that an offer was made by the union, of which you are the Secretary, to go to work on the 1939 San Francisco wages and working conditions?

A. That is right.

Q. It was made?

A. That is right.

Q. Where was it made? Where was it presented to the employer? Was it presented to the employer in Seattle or was it presented to the employer in San Francisco? What is the answer to that?

A. In Seattle.

Q. It was presented to the employer in Seattle?

A. And we also instructed our delegate here. Also, our delegates are instructed to take this matter up locally as well.

Q. You instructed the delegates to do it?

A. That is right.

Q. Did the delegates do it?

A. Well they have own meetings here off and on.

Q. I am asking, did they do it?

Mr. Resner: That was Mr. Whaley's testimony.

By Mr. Madison:

Mr. Whaley's testimony is in the record. He was talking about a memorandum agreement in which he said they would get no less than that. They didn't make it because when they got there they found it didn't do them any good. [80]

(Testimony of Sam Young.)

Mr. Resner: He has reference to the negotiating committee.

By Mr. Madison:

Q. You heard Mr. Whaley testify?

A. That is right.

Q. So far as you know, the only offer that was made in San Francisco, if any, was the offer made to which Mr. Whaley referred?

A. That is right.

Q. So, you don't know what offer was made in Seattle, do you? You weren't there at the time?

A. No, I couldn't say.

Mr. Madison: No further questions.

Redirect Examination

By Mr. Resner:

Q. No strike was called by San Francisco?

A. No, sir.

Q. There is no strike existing, is there, on the part of your union against the Packers?

A. No, sir.

By Mr. Madison:

Q. Did I understand that there are members of the local union, of your Local No. 5, in Alaska and they work up there?

A. Well, those been up there for the past two or three years. A few of them, I would say.

Q. That are members of Local No. 5?

A. That is right.

Examination by Mr. Roden

Q. You say you have got members up in Alaska who belong to Local No. 5?

(Testimony of Sam Young.)

A. Just a few of them.

Q. Whereabouts are they?

A. Well, I think, in Karluk and Chignik. They stay there the last few years, you see, and they work for the Packers up there on spare time when the season is over, you see.

Q. How did they happen to join Local No. 5?

A. Well, in other words, they joined and they go up there and stay over the season. They stay all year around and become residents there. They apply for citizenship up there.

Q. They join here and move away to Alaska? Go up there and acquire residence? A. Yes.

Mr. Resner: That is all, thanks.

MR. JOHN W. ACOSTA,

400 Oak Street, San Francisco, California being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. You are a member of Local No. 5?

A. Yes.

A. You are a member of the Negotiating Committee, this year? A. Yes.

Q. Were you a member of the Negotiating Committee last year? A. No. [81]

Q. Were you ever before this year?

A. No, never.

Q. I want to direct your attention to the ques-

(Testimony of John W. Acosta.)

tion of whether or not these negotiations were carried on in good faith or not with the intention of arriving at agreements on the part of the Cannerymen? What have you to say to that?

A. I believe they were not.

Q. Can you tell us why?

A. Because my impression when we went to the Packers or with the lawyers was it gave me an impression of indifference toward negotiations. Just like when you want to go into an office and see the men at the door and they don't know nothing and don't say nothing. In one word, they were over there only to hear us talk without giving us absolutely no basis for negotiations.

Q. In other words, you made offers and didn't get any counter offers?

A. We didn't get absolutely nothing.

Q. Did you present your 1940 agreement here?

A. We did not negotiate the wage and general conditions in here, but we negotiated Manning Scale and improvements.

Q. When you say improvements, you mean living conditions?

A. I mean, fixing up the living houses, and so on and so forth; but, in the process of negotiations we figured Mr. Moore and Mr. St. Sure were only there for asking questions without any knowledge of committing themselves to anything at all, which leave the Committee, only, talking. And they ask different things. And so that is why we went when the question of Chignik and Karluk came about.

(Testimony of John W. Acosta.)

We offered the 1939 San Francisco Agreement as the basis for to ship the men out to Alaska, which Mr. Moore completely refused to accept that.

Q. When was that?

A. About, I believe, I am not very sure of the date, but the 7th of April, I believe.

Q. In San Francisco?

A. In San Francisco. And then the 10th.

Q. The 10th of what?

A. Of April. I might be wrong one day or two.

Q. You wanted a San Francisco Memorandum Agreement with the conditions at least what they were from San Francisco?

A. 1939 San Francisco.

Q. And what was the reply to that offer?

A. The reply was it wasn't the offer of the Packers in Seattle. It wasn't the 1939 San Francisco Agreement, but it was the 1939 Seattle Agreement.

Q. In other words, he said they would sign for 1939 Seattle?

A. In other words, they want us, they ask us to sign a Memorandum Agreement as to allow the Packers free hands to ship the other crews, but leaving all of our men in San Francisco; and we didn't figure that it was [82] reasonable at all to enter into any agreement when our men was not going to be shipped.

Q. In other words, they wanted you to sign an agreement that the men from the northwest ports would go. Is that right?

(Testimony of John W. Acosta.)

A. No, that the other unions in San Francisco should go upon the signing of the agreement with the Alaska Cannery Workers. But we didn't come to any agreement with them because they told us flat that no man was going to be taken in the first ship.

Q. In the first ship?

A. On the first ship.

Q. When was that?

A. That was April in the office of Mr. Moore and St. Sure.

Q. When was the first ship supposed to go?

A. That was up to the discretion of the Company, I suppose.

Q. Well, generally, when does that go, as a matter of custom?

A. They referred to a certain date in a letter to the Negotiations Committee, but I just don't remember the date. They referred to a certain date the first ship was going to sail to Alaska.

Q. That was for Karluk and Chignik.

A. Karluk and Chignik.

Q. You heard the testimony of Mr. Rendon and Mr. Whaley? A. Yes.

Q. Do you corroborate the testimony?

A. Absolutely.

Mr. Madison: Mr. Whaley testified to things in Seattle.

By Mr. Resner:

Q. Excluding things in Seattle. I am speaking only of San Francisco. A. Yes.

(Testimony of John W. Acosta.)

Q. You were there at all the meetings in San Francisco? A. Yes.

Q. You never went to Seattle?

A. I just read the communications from Seattle, and so on.

Q. The union hasn't declared a strike?

A. No.

Q. The union is not on strike now?

A. Now.

Q. Always been willing to go on the basis of 1939 of San Francisco agreement? A. Yes.

Q. And that is your attitude, too?

A. Yes.

Cross Examination

By Mr. Madison:

Q. Do I understand the union has always been willing to go on 1939 San Francisco agreement?

A. That was the general sentiment of the members. [83]

Q. Didn't you submit a 1940 agreement? A new agreement?

A. It was submitted to the companies, 1940 agreement, yes.

Q. But you didn't mean that you were really willing to go on the 1939? Is that it?

A. In negotiations, you know, there are certain fluctuations up and down.

Mr. Resner: In other words, the unions were willing to bargain, Mr. Madison, but the companies were not.

(Testimony of John W. Acosta.)

By Mr. Madison:

Q. In other words, you asked for a little more than you expected to get. Is that it?

A. We used the 1939 San Francisco Agreement as a basis for agreement. It all depends on the companies answer, and we didn't intend to lose absolutely nothing from the 1939 agreement.

Q. You wanted to get at least 1939?

A. Well, it is reasonable to understand. An agreement is based upon certain things we gained before, and we are asking certain things in addition to that. But it was to the discretion of the Company to agree we would get it.

Q. In other words, you figured that each year what you get you are at least going to get that next year, and maybe something more?

A. Well, the general idea of the members is when we sign an agreement with the Company for 1939 there was a general understanding that that was the starting point for future negotiations.

Q. Nothing less than that? A. Naturally.

Q. And so, do I understand that you were willing to, always willing, to go on 1939 and not get anything more?

A. Of course, we always want some more.

Q. Always want some more?

A. Naturally.

Q. Did you ask for any more?

A. Naturally, the agreement calls for it. You have read the agreement, I suppose?

(Testimony of John W. Acosta.)

Q. Yes, I have. Now, the matters that you discussed down here with Mr. Moore and Mr. St Sure had to do largely with the Manning Scale, didn't they?

A. Yes, and general improvements.

Q. And general improvements in working conditions. That is to say, housing of the men and things of that kind?

A. That is right.

Q. And you didn't have any difficulty reaching a substantial accord, agreeing with them on that did you?

A. Not very much, no. [84]

Q. There wasn't much trouble about that?

A. No, we were asking reasonable things, that is why.

Q. I have no question about that. If they gave in to you, undoubtedly your request was reasonable. And they did, substantially?

A. Yes.

Q. The real difficulty was with the wages and conditions of the 1939 or of the 1940 agreement, as to whether the Seattle wages would apply or whether the 1939 wages would apply or what you got in 1940 would apply. That was the main argument wasn't it?

A. Well, we had no argument on that.

Q. That was all done in Seattle?

A. That is correct.

Mr. Madison: That is all.

(Testimony of John W. Acosta.)

Redirect Examination

By Mr. Resner:

Q. Just one or two questions, Mr. Acosta. In other words, when the union first started to bargain this year you represented you 1940 agreement. That is, in Seattle it was presented, was it not?

A. Yes.

Q. And other things you testified to were separately bargained for here? A. Yes.

Q. That was the basis for starting negotiations?

A. Yes.

Q. And things you offered in San Francisco were Manning Scale and conditions?

A. General conditions, yes.

Q. Those were also improvements over last year?

A. Not exactly improvements over last year. It was improvements over all the years, because the Company agreed three or four years before to comply with these things and they never did it. You see, for instance, in 1936 they agreed with the union to improve the conditions of housing, and so on and so forth, which they never did.

Q. Lets talk about housing, for example. This year you made certain proposals to improve the bunk houses up there, as I understand it?

A. We only reaffirmed what we asked three years before.

Q. What was that, specifically?

A. Well, build better houses for the men, and all general facilities for the livelihood of the men up there for the ways of living.

(Testimony of John W. Acosta.)

Q. What was that?

A. Well, want bath houses and better kitchens and better bunk houses and beds, and so on and so forth, general things. [85]

Q. Were any counter offers made by the negotiators locally?

A. Well, the Company agree each year to comply with this request from the union, but they never did it.

Q. Nothing was ever done?

A. Well, for instance, they agreed to do certain things demanded of them and this year they go over there and start building a little house. And that is all they do, because they claim they haven't got absolutely no wood or lumber and no carpenters, and so on. But here they offer to take everything over there and do it, but when we get over there they only call one carpenter and have just a little pile of wood and start a little house. And that is all they can do, because they claim they have no timber.

Q. Did they agree from San Francisco this year they would improve the housing conditions?

A. To a certain extent, yes, they agreed to certain things. But we were prepared to ask the companies to let us go on *and* inspection of the ships to see how much lumber they get so as not to get fooled again.

Q. You wanted to be sure they would take the lumber along?

A. Yes, and sufficient carpenters.

(Testimony of John W. Acosta.)

Q. What did they say to that?

A. Well, we didn't come to any conclusion on that, because, you know, the meetings was short, and so on, and we proceeded to wait another two or three days.

Q. Did they give you any answer at all?

A. Well, we go to the Superintendents for the Company and they generally agree to certain things, and certain of the things they just completely refuse to agree with. For instance, in the building of two bunk houses in Karluk, I believe, or Chignik, either one of them, they are completely houses not even for pigs to live in. And we want the companies to erect new houses and sanitary conditions and everything, but the Superintendents claim there was no time, only to erect one bunk house at a time. Which, well, we agree finally to go on that, to let the Company build that one bunk house and leave the old one for next year, and so on.

Q. I want to turn to the question of Manning Scales for San Francisco for this year. When the union made a proposal on the subject of Manning Scales what did it have in mind for the basis of them?

A. The union make a proposal of increasing certain number of men per line, according to the new machinery that the companies were going or are putting in in Alaska. [86]

In certain canneries the production of the machinery in increasing around thirty or forty cans a minute above the previous years.

(Testimony of John W. Acosta.)

Q. That is, by the installation of new machinery?

A. That is right. And the union contended this installation of new machinery requires more men, and not the number of men the Company offer.

Q. Did you ask them to increase the number of men in these operations where this new machinery was put in?

A. Yes. One of the Superintendents agree with us, one of our members in the Negotiating Committee, to give certain increase of men. But, as I say before, over there they were negotiating without any foundation of saying yes or no.

Q. When you negotiated here in San Francisco about the Manning Scales what reply did you get from Mr. St. Sure and Mr. Moore about the Manning Scale?

A. Generally have nothing to say about it.

Q. Did they come back with the counter offer?

A. There was superintendents over there, and we went into detail on the Manning Scale and generally the superintendents agree with the foremen that that was present over there, that these men were needed.

Q. These foremen you are talking about, where did you talk with them, here in San Francisco?

A. In San Francisco. Mr. Rendon was the man took up this question of Manning Scale.

By Mr. Madison:

Q. The foremen are of your men. As I understand it, the Superintendent was always there?

(Testimony of John W. Acosta.)

By Mr. Resner:

Q. To who do you refer?

A. The Superintendents, I refer to Company man. And the foremen to our union members.

Q. Did you talk to the foremen?

A. Two of them. One of them agree, the other I don't remember.

Q. Was that in agreement with the canners, or did the final agreement have to come from Mr. St. Sure and Mr. Moore?

A. Finally, I believe, it should come through them. I don't know.

Q. They were supposed to make the final agreement?

A. They agree with us in the table, that was agreement of the Superintendent, but he was supposed to take this question to Mr. Tichenor.

Q. The Superintendent wasn't authorized to sign any agreement?

A. No. And then, in turn, Mr. Tichenor, I suppose, would give [87] authorization to the lawyers.

Mr. Resner: I think that is all.

Any questions?

Examination by Referee Roden:

Q. When did you offer to go back under the San Francisco agreement?

A. The first offer we made around—don't quote me on this, because it might be one day before or one day after—the 7th of April.

Q. And the great trouble was wages?

A. We had no trouble on wages. We only asked

(Testimony of John W. Acosta.)

1939 San Francisco conditions and wages. That is the basis of memorandum to ship the men from here to Alaska, and the flat reply was no.

Q. That was about April 7th?

A. April 7th.

Referee Roden: That is all.

Recross Examination

By Mr. Madison:

Q. When you speak about April 7th and agreeing to go back to work on the 1939 San Francisco wages, was your testimony the same as has been testified by other members of your Committee that the Memorandum Agreement was to be at least as good as 1939 wages?

A. No, not even asked. At least, we asked 1939 San Francisco conditions and wages flat.

Q. And you were willing to sign on that, flat, at that time?

A. Flat, providing it was retroactive to the final agreement in Seattle, because the agreement in Seattle was a coastwise agreement and it was going to be subject to it.

Q. In other words, if the 1939 wages were less than the wages obtained in Seattle, then you would get the Seattle wages, the higher wages that were obtained later?

A. We was taking that chance.

Q. You were taking that chance you might get some more?

A. Or less. It all depends on the process of negotiations, that is all.

(Testimony of John W. Acosta.)

Q. Wait just a minute. I am coming to that "less" in a minute! At the same time I understand if the negotiations in Seattle were less than you were going to get at least the 1939 wages in San Francisco. Am I right?

A. I don't know. We went ahead on the basis of negotiating the Memorandum. The lawyers, as I stated before, flatly were over there only to say yes or no. There was no process of negotiations because they were not willing to do so. My understanding as a member [88] of the Committee was that the Company nominated or put or paid these two men over there to represent the three companies; and my understanding in particular was when the Company say, "Here it is. Go and negotiate." They implied to give them a certain price, to come to an a yes or no between negotiations, which didn't help because they never negotiated.

Q. Getting back to my question as to what the Memorandum Agreement was, what the proposition was, you were willing to settle on, I understand that you were willing to go on the basis of the 1939 wages, San Francisco wages?

A. That is correct.

Q. Plus whatever you might get out of the Seattle Agreement?

A. Well, there was an expectancy is all.

Q. Expectancy, is all? A. Right.

A. And under no circumstances were you to get less than 1939 wages?

A. According to that agreement, no. According

(Testimony of John W. Acosta.)

to the Memorandum Agreement we were not going to get less.

Q. No matter what happened in Seattle?

A. That was dependent upon the negotiations of the Union.

Cross Examination

By Mr. Oliver:

Q. This April 7th date you refer to, that refers to work in Central Alaska?

A. That refers to Chignik and Karluk.

Q. Now, the date on which you refer to as being willing to go to Bristol Bay for the 1939 San Francisco wages, when was that offer made by you?

A. Well, I am not very good in remembering dates, but it was around six weeks ago, I think, seven weeks, I don't remember.

Q. What are six weeks from now?

A. Well, I don't know, the 28th or 20th of last month.

Q. Of May?

A. I believe. I am not certain. You don't have to quote me on that, because I am not certain.

Examination by Referee Roden:

Q. Local No. 5 doesn't send any men to Bristol Bay, anyhow, does it? A. No.

Redirect Examination

Q. Last year?

A. Last year, yes——Bristol Bay, Chignik, and Karluk.

Q. You always send men to Bristol Bay?

(Testimony of John W. Acosta.)

A. That is which?

Q. This year they are not operating with San Francisco operators? A. No. [89]

Q. But you haven't declared any strike against Bristol Bay canneries?

A. Absolutely not.

Mr. Resner: That is all I have at this time, Mr. Referee. I have two short witnesses in the morning, but before we adjourn I would like to have made a part of the record at this time the Regulation No. 10 of the Alaska Unemployment Compensation Law fixing the seasonal dates in this industry. I would like to have that given a number and made our next in order.

(Received in evidence as Claimant's Exhibit No 13.)

CLAIMANT'S EXHIBIT No. 13

#13

BENEFIT REGULATION No. 10

(Salmon Industry)

Section "3(c) (1)" of the Alaska Unemployment Compensation Law provides as follows:

"The term 'seasonal industry' means an occupation or industry in which, because of the seasonal nature thereof, it is customary to operate only during a regularly recurring period or periods of less than one year in length. The Commission shall, after investigation and hearing, determine, and may thereafter from time to time redetermine, the long-

est seasonal period or periods during which, by the best practice of the occupation or industry in question, operations are conducted. Until such determination by the Commission, no occupation or industry shall be deemed seasonal' "

Having given notice to all intersted parties of its intention to do so, the Commission did investigate and, after hearing, did determine:

A. That the industry known as the "Canned Salmon Industry" is of a seasonal nature; that it is customary to operate only during the regularly recurring periods.

1. That there are two general occupations within the "Canned Salmon Industry" known as the "short" and "long."

2. That the seasonal periods in the Territory of Alaska for these "short" and "long" seasons within the "Canned Salmon Industry" in the following districts are as follows:

Ketchikan District, including Hidden Inlet to Union Bay and the West Coast of Prince of Wales Island:

Short Season: June 25-September 20.

Long Season: April 10-October 1.

Wrangell District, including Union Bay to south end of Wrangell Island and Burnett Inlet:

Short Season: June 25-September 5.

Long Season: April 15-September 20.

Petersburg District, including canneries on Kuiu Island and Kupreanof Island:

Short Season: June 15-September 15.

Long Season: April 10-September 15.

Icy Straits, Chatham Straits, and Peril Straits:

Short Season: June 1-September 10.

Long Season: April 10-September 10.

Taku Inlet:

One Season: April 12-September 23.

Yakutat:

Short Season: May 10-September 10.

Long Season: April 21-October 10.

Cordova District, including east side of Prince William Sound:

One season: April 1-August 20.

Prince William Sound, including eastern side of Kenai Peninsula:

Short Season: June 10-September 1.

Long Season: April 10-September 10.

Cook Inlet, as far west as Chugach Island:

Short Season: May 25-September 10.

Long Season: April 5-September 10.

Kodiak Island, including Afognak Island:

One Season: April 5-September 5.

Alaska Peninsula:

One Season: April 1-September 10.

Bristol Bay, all canneries in Bay proper:

One Season: May 5-August 25.

Mr. Madison: Since Counsel is offering that Regulation in evidence, I would like to state for the purpose of the record that I, on behalf of my clients, question the propriety of that Regulation on the ground that the seasons as outlined therein are in excess in point of time to the actual sea-

sons, and reserve the right to ask the Commission to consider the propriety of that order at that proper time.

Mr. Oliver: I make the same request.

Mr. Resner: What order do you refer to?

I introduce this for the purpose of showing the seasonal character of this industry and the approximate dates this industry is in operation.

Mr. Madison: Well, I object to it for the reasons given.

Mr. Oliver: Yes. I object to it for the same reasons; and, further, it is not a true record of the actual dates.

Referee Roden: Those dates are fixed by the Commission, and they seem to have authority to fix it by Statute.

Mr. Oliver: So far as I know they do pursuant to proper notice.

Referee Roden: I don't know if they can notify everybody to go fishing in Bristol Bay. Probably they notified your Local Council?

Mr. Resner: The unions never had notice. One more thing here before we conclude. That is all I want to offer at this time. We have two witnesses who will not be long in the morning.

(Remarks were made off the record.) [90]

Referee Roden: We will adjourn until ten o'clock in the morning.

Mr. Resner: I want to get one thing clear before we adjourn this hearing. The only question is

whether or not a labor dispute exists, and any defenses that may be offered, any other reasons, aside from the labor dispute will not be admissible.

Referee Roden: Not upon this hearing.

Mr. Resner: That is my understanding. Thank you.

Mr. Oliver: Will there be some other opportunity to object?

Referee Roden: I understand the Commission can listen to objections any time prior to a final decision by them.

At 5:05 P. M. the hearing was adjourned to reconvene Tuesday morning, June 18, 1940, at 10 a. m.

Tuesday Morning Session

At ten o'clock, June 18, 1940, the hearing was reconvened by Referee Roden.

Referee Roden: All right, Gentlemen, we may as well proceed.

Mr. Resner: I am offering at this time and want to make part of the record some additional Claimants.

Referee Roden: All right. We will put that in with the others.

Mr. Madison: Are those Claimants filed?

Mr. Resner: Yes.

At this time I want to offer the personnel of the Alaska Salmon Company from our Union, Local No. 5, for the 1939 season (Indicating)

Mr. Oliver: For what purpose?

Mr. Resner: These are the people who worked at Alaska Salmon plants last year in Alaska and who work there from year to year, as I understand it. It is our contention Alaska Salmon wasn't going to operate under any circumstances this season; therefore, these people can't be unemployed because of any labor dispute, even if this inability to arrive at a contract constitutes a labor dispute.

Mr. Oliver: I object to that other than as a list which Mr. Resner contends represents persons [91] who were employed by the Alaska Salmon Company at their plants at some time during the 1939 season.

Referee Roden: What is the ground of the objection?

Mr. Oliver: We don't, in the first place, admit that these men are employes; secondly, there has been as yet no evidence one way or the other introduced as to the reason why the Alaska Salmon Company did not operate during 1940.

Referee Roden: I agree with you on that point, but on the first point raised by you, it seems to me that there ought to be not much dispute as to whether or not these men worked for the Alaska Salmon Company in 1939.

Mr. Oliver: I have not had an opportunity to check the list. I will be glad to do so, and if we find any errors in it we will so notify you.

Referee Roden: All right, sir.

Mr. Oliver: Mr. Resner, I understand you to state these were men employed by Alaska Salmon Company in 1939 and in other years. I cannot admit that is so because these employes change around greatly.

Referee Roden: I don't think whether they were employed before 1939, probably, is of great importance in this hearing.

Mr. Resner: That is right. This list is a list of those who worked for the Alaska Salmon plants during 1939. The only point I made is generally year to year the same workers go back to the same plants.

Mr. Oliver: I can't agree to that.

Mr. Resner: I am not offering it for that. That just happens to be the way the industry works—the same workers generally go back to the same plants from year to year, not exactly—and this list is a list of those employes who were employed in Alaska Salmon plants last season. And these plants weren't going to operate under any circumstances this year and, therefore, these people are unemployed not due to any labor dispute at all but because the canneries weren't going to operate under any circumstances.

Mr. Oliver: Are you introducing this as a list of people who were employes of Alaska Salmon Company in Alaska in 1939? And, further, does this list constitute a list of employes who have filed claims; each and every one of these have filed claims? [92]

Mr. Resner: I can't say exactly, but to the best of my knowledge yes.

Mr. Oliver: Otherwise, I don't see that it is relevant.

Referee Roden: We can check it.

Mr. Oliver: Well, restricted to that purpose, I have no objection subject to my right to check it to see whether it is correct.

Mr. Resner: I will recall Mr. Sam Young.

MR. SAM YOUNG,

resumed and testified as follows:

Redirect examination by Mr. Resner:

Q. Mr. Young, I want to direct your attention to the night of May 29, 1940. Did the union have a general membership meeting at that time?

A. Yes. That is right.

Q. And was the question of these negotiations discussed at that meeting?

A. Yes, sir.

Q. You were present there?

A. Yes.

Q. Minutes were made at that meeting?

A. That is right.

Q. I want to show you this paper and ask you if those were the men at the proceedings?

Mr. Madison: May I ask the purpose of these minutes?

Mr. Resner: Yes. These are the minutes of the union at the time in question. Statement was made by the witness an offer was made to the Cannerymen with respect to signing for the 1939 San Francisco

(Testimony of Sam Young.)

wage scale and conditions. This is to substantiate the testimony of the witnesses, being a written record this transpired and the offer was made.

Mr. Madison: Of course, it is not a record any offer was made. It is a record they decided—a self serving document they were discussing making an offer.

Mr. Resner: It may be self serving. The witness has testified it was made. This merely adds to the testimony the witness has already given. As a matter of fact, their statements to the fact are self serving, so far as that is concerned.

Mr. Madison: I object on the grounds that it is incompetent, irrelevant, and immaterial, and it is a self serving statement. [93]

Referee Roden: I will admit it for what it is worth. Go ahead.

Mr. Resner: I want to direct your attention to those portions of the minutes having to do with the discussion of the 1939 contract. Will you find that in there and read the proposal finally adopted by the union, Mr. Young?

Mr. Madison: Are you offering the entire minutes or just portions of it?

Mr. Resner: Just that portion.

Mr. Madison: I think, if the document is going to be offered for what it is worth, the entire document should be offered for what it is worth.

By Mr. Resner:

I am offering that part of it which has to do with our case. Other parts are not relevant at all.

(Testimony of Sam Young.)

A. (Mr. Young) "Motion to reconsider carried, moved, seconded, concurred that we accept the final proposal of the Industry providing it contains a clause that the San Francisco 1939 wages and conditions will be retained and instruct our delegate in Seattle to sign for Local No. 5. However, if the agreement is worded in any other way, George Woolf be instructed to demand a memorandum or a supplemental rider to this effect.

"Moved and seconded, in view of the fact San Francisco Cannerymen have refused to operate their canneries in 1940 and that we will not be employed this year due to the action of the Cannerymen that we delegate our sister unions in Seattle and Portland full authority to negotiate their own agreements for 1940.

"Moved and seconded, that we go on record to sign the 1939 agreement offered by the industry under protest. Substituted for the whole, that we instruct Brother Woolf to sign agreements providing 1939 wages and conditions of San Francisco be retained in a clause to be inserted in the coast-wise agreement; and also to the effect that all previous canneries operated by Local No. 5 shall be manned and operated by Local No. 5 crews. Moved, seconded, and carried."

By Mr. Madison:

Q. I understand what you just read to the Reporter appears from here to here?

A. That is right (Indicating) [94]

(Testimony of Sam Young.)

By Mr. Resner:

Q. That is the motion made, carried, and adopted at the meeting of May 29th of this year, Mr. Young?

A. That is right.

Q. And was that proposal negotiated with the union?

A. Yes.

Q. How?

A. By mail and telegram.

Q. I show you this telegram and ask you if you can identify it?

A. Yes. May I read the telegram?

Q. That is a copy of the telegram.

A. Following motion passed, "That we instruct Brother Woolf to sign the agreement providing the 1939 wages and conditions of San Francisco be retained, in clause to be inserted in the coastwise agreement; and, also, to the effect that all canneries previously operated by Local No. 5 shall be manned, if operated, by crews of Local No. 5." Signed, "Sam Young."

Mr. Resner: I want to offer that telegram in evidence at this time.

Mr. Madison: Has it been identified as to the time?

A. (Mr. Young) That same night.

Mr. Madison: May 29th?

Mr. Resner: Yes. That can be verified by the records of Postal Telegraph, so far as that is concerned.

(Received in evidence as Claimant's Exhibit No. 15 and 16, respectively.)

(Testimony of Sam Young.)

Referee Roden: The Minutes will be No. 15 and the telegram will be Claimant's Exhibit No. 16.

CLAIMANT'S EXHIBIT No. 15

#15

ALASKA CANNERY WORKERS #5

Minutes

General Membership Meeting

Wednesday, May 29th, 1940

Karl Yoneda, Chairman Attendance: 550

M. Whaley, Recording Secretary

J. Acosta, Reading Clerk

Sister Rose Dellama of the Yanks are Not Coming Committee spoke on behalf of the Peace Rally to be held in Polk Hall Memorial Day and urged the Brothers to attend the meeting, and sell tickets. Also recommended that we elect one Delegate who will be our Yanks Are Not Coming Representative; and stated that Brother Filimon Vargas had volunteered to act in this capacity.

M:S, to concur in request of Speaker and elect Brother Vargas as Delegate. A:S, to elect three Delegates, two more besides Brother Vargas. Amendment carried.

Nominations:

Troche

Rendon

Gutierrez

Brusuelas

Noland—declined

Fukuda—declined

(Testimony of Sam Young.)

Aguirre—declined

Michel—declined

Glumaz—declined

Chow—declined

H. Roche—declined

Gallegos—declined

M:S, to close nominations. Carried. Bros. Noland, Fukuda, Aguirre, Michel, Glumaz, Chow, Roche, and Gallegos declined.

M:S, to elect the remaining four Brothers and Vargass, making a Committee of 5. Carried.

Reading of the Minutes of the Special Membership Meeting of May 24, 1940, were read. M:S, to adopt as read. Carried.

Reading of the Executive Board Minutes of May 28th, 1940.

Report of the Negotiating Committee and Coastwise Negotiating Committee was discussed at length.

Brother George Anderson discussed the Executive Board recommendations at length, and assured us that we will have a very good chance of getting our unemployment insurance, as we are having a hearing on this very soon; and the hearing will take about 8 or 10 days. Then this material has to be sent to Alaska and then re-discussed and sent back here.

Moved, that in view of the fact that we are not going to Alaska this year, let the problem become one of Seattle and Portland's only, and Local No. 5 instruct the Coastwise Negotiating Committee to this effect. No second.

(Testimony of Sam Young.)

M:S, that we reconsider our action taken at last Friday's meeting on the 1940 agreement. A:S, to table this motion to reconsider.

General Membership Minutes, May 29, 1940.

M:S, to object to consideration of this motion to table. Motion Carried, 213 voting yes, and 75 voting no.

Motion to reconsider carried.

M:S, to concur that we accept the final proposal of the Industry, providing it contains a clause that the San Francisco 1939 wages and conditions will be retained, and instruct our Delegate in Seattle to sign for Local No. 5; however if the agreement is worded in any other way, George Woolf be instructed to demand a memorandum or a supplemental rider to this effect. A:S, that in view of the fact that the San Francisco cannerymen have refused to operate their canneries in 1940; and that therefore we will not be employed this year, due to the action of the Cannerymen, that we delegate to our sister Unions in Seattle and Portland full authority to negotiate their own agreements for 1940. A:A:S, that we go on record to sign the 1939 agreement offered by the Industry, under protest. Substitute for the Whole, that we instruct Bro. Woolf to sign the agreement, providing that the 1939 wages and conditions of San Francisco be retained in a clause to be inserted in the Coastwise agreement, and also to the effect that all previous canneries operated by Local 5 shall be manned and operated by Local 5 crews. Substitute for the whole carried.

(Testimony of Sam Young.)

M:S, that we hold the elections between June 1st and 15th, 1940. Carried.

M:S, that we comply with the Constitution and elect a Balloting Committee of 5. Carried.

Nominations:

Colon

Berolla

Fratlicelli

Aguirre—declined

Glumaz

Acosta—declined

Valdez

Caballero—declined

M:S, to close nominations, Carried, Bros. Aguirre, Acosta, and Caballero declined.

M:S, to elect remaining five by acclamation. Carried.

M:S, to concur in recommendation of Executive Board that the Business Agent's salary stop June 15th, and that Brother Woolf be sent to the Maritime Federation Convention in place of Brother Noland. Carried.

M:S, to adjourn. Carried.

The meeting adjourned at 10:30 p.m.

Fraternally submitted,

M. WHALEY,

Recording Secretary.

(Testimony of Sam Young.)

CLAIMANT'S EXHIBIT No. 16

POSTAL TELEGRAPH

Night Letter

George Woolf

UCAPAWA Dist. No. 1

206 Bay Building

Seattle, Washington

Following motion passed quote: That we instruct Brother Wolfe to sign the agreement providing that the nineteen thirty nine wages and conditions of San Francisco be retained in a clause to be inserted in the coastwise agreement and also to the effect that all cannries previously operated by local five shall be manned if operated by crews of Local five.

SAM YOUNG

Charge: Alaska Cannery Workers Union

Att. This men are ready to go now on the basis of 1939 S. F. agreement.

Curtailment—pp. 11-p. 18—60 close period weekly.

1940—pp. 11, pp. 18—Enlarging the clause 84 hours, parag. B—Fishing area describe.

Maurice Whaley—question about meeting with the packers—I dis. mainly manning scale. 5 or 6 meetings, question of wage is transferred to Seattle—deadline of C & K's, memo. agree. to St. Sure, 1939 S. F. agree.

(Testimony of Sam Young.)

Mr. Resner: That is all, Mr. Young.

Cross Examination

By Mr. Oliver:

Q. Mr. Young, you testified yesterday, I believe, that you mailed to the Commission in Alaska various lists?

A. Yes.

Q. Of employes of the various companies who were employes in 1939 who had filed claims?

A. Those who had filed claims I sent a list and attached to it a letter asking for hearing.

Q. Now, there has been introduced in evidence two lists, one entitled Alaska Salmon Company Personnel of 1939 season which consists of 250 names, and one Woodriver Personnel of 1939 Season which consists of 46 names. Do you recall whether you sent a list to the Alaska Commission containing 250 names and 46 names of individuals who were employed in 1939 by the Alaska Salmon Company and who have since filed claims? [95]

A. Well, personally, I have them separate for different canneries. If a man comes in and presents applications stating they qualify and I taking those claims and write to the Department of Unemployment in Alaska asking for hearing meeting. That was submitted here yesterday. But I can say many of the names from this list are names that have been sent in. Of course, there are some, that is, we have make arrangements. Some of them out of town can file the application out of town, which I haven't got, those Claimants, because the agency here claim that men out of town can file out of town; and those that

(Testimony of Sam Young.)

have not yet been filed can file between now and September. So, some of them can file and some of them have yet been filed.

Q. These actually constitute, do they not, the names on the union records of persons who were employed in Alaska by the Alaska Salmon Company?

A. That is right.

Q. And you don't know which, if any, of these people may or may not have filed any claims, do you?

A. Well, I would say the list could be checked up. That has been filed. And some of them have no record is for the reason some of them have been filed out of town. Some worked and some filed out of town,—like Oakland, San Mateo, Stockton, and Los Angeles. And I have no record of those filed out of town, and I have only record of those filed in San Francisco and return me the applications which I request for hearing—those that I know; we have a record to show that.

Q. Do you know whether or not any of these people have died since 1939?

A. Well, if those die they can not find no application. Those that work they can not find applications.

Q. I am merely trying to find out what this list is. This is a list of people on union records?

A. This is right.

Q. And you do not know that each and all of these people have filed claims?

(Testimony of Sam Young.)

A. I couldn't say off-hand, no. If they do it can be checked up in the record.

By Mr. Resner:

Q. At least, your union record shows every man on this list worked in a plant operated by the Alaska Salmon Company last year in Alaska?

A. Yes, sir. That is true.

Q. You copied this from the union list? The shipping lists? A. That is right.

By Referee Roden: [96]

Q. Then, I understand that this list is solely introduced for the purpose of showing the names of the men who worked for the Alaska Salmon Company last year, and for no other purpose?

A. That is right.

Mr. Resner: That is right.

By Referee Roden:

Q. What induced you to send up this list to Alaska?

A. Because, we introduced this list because that particular company not operate this year. They told us they are not going to operate, so those men are entitled for compensation because they are not operating. That is the reason we submit this particular cannery list.

Q. That is the only reason you sent it up there for? A. Yes.

Q. To Juneau?

A. I mean, I brought it up here for this purpose.

Mr. Resner: This list hasn't been sent to Juneau.

Referee Roden: That is what I wanted to find out.

Mr. Resner: All right, Mr. Young.

MR. REVLES CAYTON,

593 Market Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. You are the Secretary of District Council No. 2, Maritime Federation of the Pacific?

A. That is correct.

Q. And are you an officer and member of the Maritime Cooks and Stewards?

A. I am a member, not an officer, at this time.

Q. You were last year?

A. No. I was Secretary of the District Council last year at this time.

Q. And you participated in negotiating this year for Alaska Cannery Workers?

A. I acted as negotiator for various negotiating committees during the last negotiations.

Q. That is, the negotiations which have just finished without a contract being reached?

A. That is correct.

Q. It is for the 1940 season?

A. That is correct.

Q. Did you serve in a similar capacity in 1939?

A. As Vice President of the Council I assisted the Secretary at that time in that capacity. I was Vice President in 1939.

Q. What Unions are connected with the Maritime Federation that were interested in these negotiations?

(Testimony of Revels Cayton.)

A. Alaska Fishermans Union, Alaska Cannery Workers Union, the American Communications Association; [97] The Marine Firemen, Water Tenders, and Wipers Association.

Q. The Marine Firemen Water Tenders and Wipers Association is all one union.

A. American Communications Association, Machinists No. 68,—East Bay Machinists.

Q. Marine Cooks and Stewards?

A. Marine Cooks and Stewards. Marine Engineers Beneficial Association.

Q. Pilots? Master Mates and Pilots in on this?

A. No. I think that is all.

Q. Your Council, as I understand it, acted as a Coordinating Committee for these various unions, attempting to negotiate a contract for the current Salmon season in Alaska, 1940 season?

A. That is correct.

Q. When you say you acted as a Coordinating Committee, will you describe that? Tell us what you mean by that?

A. Well, unions prior to the opening of the season got together in this Coordinating Committee and generally attempted to work out a policy that would facilitate the reaching of agreements with the Packers. They would compare the various progress that they were making from time to time. That is about the general function of it, to coordinate the work, as it implies, of the various negotiating committees.

Q. Did you meet with representatives of the Packers?

(Testimony of Revels Cayton.)

A. I think two or three occasions I met with the representatives of the packers; namely, Mr. St. Sure and, I think it was, Mr. Moore.

Q. And do you recall approximately when those meetings started and when they ended? I mean, within what period of time were they held?

Mr. Madison: The two, you are referring to?

By Mr. Resner:

Q. I am trying to get the approximate date the negotiations started and the final time any meetings were held.

A. They started at the very first, I think, before they had met hardly with any of the unions at all. Then, there was one in between, the middle, with the Alaska Fishermans Unions. And the final meeting was on the last deadline set at midnight, around that day leading up to midnight.

Q. That was in May?

A. Yes. That was about in the first and last meetings, one in between. [98]

Q. Now, I want to ask you a question, Mr. Cayton, with regard to these negotiations. In your opinion were these negotiations carried on by the representatives of the operators in good faith or not?

A. Well, prior to this time, in the various negotiations we have dealt directly with the representatives of the packers.

Q. When you say prior to this time what do you mean? A. I mean, previous seasons.

Q. Previous years?

(Testimony of Revels Cayton.)

A. Previous years. That is, with the representative of the Red Salmon Company, of the Alaska Packers; and their men would negotiate directly with the heads of these companies and their advisors were men who had a great deal of practical experience in the field and they knew the Alaska Industry just as well as the men who were going to Alaska knew it—as men like Mr. Tichenor and the rest of them knew more about the Salmon Canning Industry than I; knew as much about it as any of the fellows negotiating. And on the basis of that they were able to hammer out some sort of agreement. This year this practice was not carried out. The negotiations were given over to a group of negotiators for them who first were not men who had any practice at all in the industry, who were attorneys, and who were not authorized to commit the Packers as such. For example, if there was anything in the question of a dispute the attorneys did not have the power to say, “Well, o.k. That will go.” And, “That is agreed on.” And, “I will go for that.” Well, the answer was, “Well, we will have to take it back to the Packers and see what they say about it.” In other words, it was sort of second hand negotiations.

Q. Stopping you there, Mr. Cayton, and referring to the authority your Committee and your Representatives from the Union had from your unions, had you come in with definite proposals that could be accepted? That the union had authorized you to go for?

A. Yes.

Q. Negotiations for the unions had been pre-

(Testimony of Revels Cayton.)

viously authorized by the union what the unions wanted?

A. That is right. And if there was a compromise. For example, the unions wanted this. If there was comprising the Negotiating Committee had power to take that back and recommend to the membership and they practically can bind the union to such and such an agreement.

Q. In other words, they stated in their opinion the union would go for that and they practically committed the union to it?

A. That is right. [99]

Q. They were sure the union would go for it after they took it back? Is that the point you were making?

A. Yes. And also the union felt this. We were glad. If the Packers wanted to have attorneys in the field that is o.k., but we did feel if they would have had a couple of practical men, Mr. Commissioner, a couple of practical men who had been to Alaska and knew the conditions and who could talk with the men just exactly what the problem was, on that basis they could trash it out. And we felt and all the unions felt that the attorneys should have been augmented by the men representing the Packers who knew something about Alaska and something about the conditions there, and what the beef was all about. And, as it was, we were talking with men who didn't know Alaska from Florida.

Q. Did the unions come in with definite proposals, Mr. Cayton? A. They did.

(Testimony of Revels Cayton.)

Q. And how were those proposals submitted?

A. In the form of a written agreement, proposed agreement, to constitute the basis for negotiations.

Q. In other words, did the Alaska Cannery Workers submit such a proposed written agreement for 1940?

A. I understand most of their work was being done in Seattle. It was mainly a question of wages, and a few things like that.

Q. Wages and Manning Scale in San Francisco to be incorporated in a memorandum agreement?

A. That is correct.

Q. But you know, do you, whether or not the union submitted their offers to the Canners?

A. All unions made concrete proposals.

Q. In written form? A. Yes.

Q. Did the Canners come back with anything in written form?

A. Not according to my knowledge. According to my knowledge of the thing they carried on a process of rejecting things put by the union and stating, "We must have certain reductions all down the line," to all the unions.

Q. In other words, they said they had to reduce the things the unions had last year all the way down the line?

A. I think the Packers, or the representatives of the Packers, will state here that the general idea was there had to be a substantial reduction in the operating expenses this year and every union was going to have to take a slice of that cut. That was

(Testimony of Revels Cayton.)

the frank statement at the beginning and their frank statement at the end. I think it will be their frank [100] statement here.

Q. And I want to draw your attention to this fact. For instance, let us take the Alaska Fishermans Union, for example. Do you know what they proposed to the Operators this year? What they wanted?

A. The Alaska Fishermans Union would have gone for the same agreement they had in 1939, the previous year. They did, however, want some small changes where the Company had, for example, not given adequate gear on some of the ships, and what not, and were to be in the agreement but still didn't furnish it. And they wanted penalty clauses if this wasn't furnished by certain times. Also, they wanted equalization in the travelling money for the Alaskans. Now, they felt in connection with this that a great deal of adverse publicity was coming to their union and people in the states generally because the resident fishermen were not getting the same wage in regard to the present season there as fishermen who came from the States. And they wanted an equalization of this. However, it is my frank opinion that these things were very minor and if the same price on fish as of 1939 could have been given to the fishermen there would have been nothing standing in the way for reaching an agreement.

Q. Now, with respect to the fact the fishermen offered to renew their 1939 agreements except as you stated here, did the Packers come back with a coun-

(Testimony of Revels Cayton.)

ter proposal in writing, with any other concrete form?

A. Mostly they come back in writing, so far as I saw, were a series of letters stating that—placing certain deadlines as to the negotiations—and if the negotiations weren't concluded by those times that everything would be off. Now, it is possible that correspondence took place between the Packers and the Unions that didn't come to my attention. It might have come to a meeting and been reported verbally, some of these things, and might have been in writing. I couldn't say definitely in regards to that.

Q. In your capacity as Secretary of the District Council and Representative of the Coordinating Committee, was it your function to communicate the position of the unions to the Packers?

A. It was. When joint positions were taken, why, we did that.

Q. Did you write them a series of letters?

A. I did. [101]

Q. I want to show you first the letter of April 9, 1940, addressed to the Industry, attention Mr. Paul St. Sure, signed by yourself, and ask you if that letter was sent by you?

Mr. Madison: May I see that? (Indicating)

By Mr. Resner:

Q. Would you look at that letter, Mr. Cayton, and tell us whether that is a copy of the letter you sent to the industry in care of Mr. St. Sure?

A. It is.

(Testimony of Revels Cayton.)

Q. At this time, Mr. Referee, I want to offer this letter in evidence as Claimant's next in order.

(Received in evidence as Claimant's Exhibit No. 17)

You sent this letter Mr. Cayton on April 9, 1940, to the Industry signed by yourself, Secretary of District Council No. 2? A. That is true.

Q. Copies of this were sent to Alaska Salmon, Red Salmon, and Alaska Packers. I want to offer this, Mr. Referee as Claimant's next in order.

(Received in evidence as Claimant's Exhibit No. 18)

CLAIMANT'S EXHIBIT No. 18

April 9, 1940

Alaska Salmon Industry, Inc.,
230 California Street
San Francisco, California

Gentlemen:

Replying to your letter of April 9.

Immediately upon the receipt of your letter the unions affiliated with the District Council #2 held a meeting at which your letter, which was considered more in the nature of an ultimatum, was discussed by all of the interested unions in this district.

After a full and complete discussion of your letter all of the union to which you referred in your letter decided that they are ready, able and anxious to continue, and if possible complete contract arrangements with you at the earliest possible time.

(Testimony of Revels Cayton.)

For the past several months all of these union have signified their intention to negotiate an agreement with you and in particular to conclude an agreement within a reasonable time before your vessels usually sail.

The proposals that you have made so far, are and have been unacceptable to the unions and we feel that your present attitude in endeavoring to force through a contract and by delivering ultimatum after ultimatum impels us to question the good faith on your part.

To list a few of the inadequate proposals you have made: you desire for instance to eliminate the \$75.00 penalty clause from Alaska Fishermen's Union, which clause has been in effect for 15 years; you wish other concessions from Alaska Fishermen's Union which they have enjoyed for many years and which they do not feel they should relinquish; with respect to the Marine Cooks & Stewards you apparently wish to revert to the old-style practice of not recognizing the 8 hour day and you desire to eliminate most of the compensation heretofore paid for overtime; your proposal also endeavors to cut the season for the Alaska Cannery Workers to approximately 35 days less than it has been.

We wish to direct your attention to the fact that the Alaska Salmon industries are being exploited not solely and only for the benefit of the corporations that own and maintain the plants but are being exploited as well for the benefit of the people

(Testimony of Revels Cayton.)

that operate the plants and have for many years enjoyed the major portion of their income therefrom. These workers must receive their fair portion of the wealth of this industry and we cannot accept any proposal, let alone any ultimatum that has for its purpose the elimination of conditions heretofore enjoyed.

It was our hope that at the outset of this season's negotiations it would have been possible to sit down around a table, with the veterans of the Salmon Packing industry who have represented the Company for so many years, and who are practical men, and hammer out an agreement. Instead of this there has been a series of half-hearted meetings called by yourselves. The negotiators from the various union report that your committee has been able to make no direct answers or binding commitments.

The spirit of your letter is an attempt to saddle upon all of these unions an arbitrary attitude toward the Packers and a reluctance to bargain with them. This we emphatically deny. We have endeavored, ever since we first suggested that negotiations be commenced, that such negotiations be speeded toward the end that we reach a speedy and amicable conclusion. We feel that your dilatory tactics have been the cause for the last minute rush.

We again wish to advise you that we will meet as often and as long as necessary in order to conclude this agreement but we again state to all concerned that if the officials of your various Com-

(Testimony of Revels Cayton.)

panies would sit around the table with us, and with their counsel if they choose, negotiations could probably be concluded within a short time.

Very truly yours,

DISTRICT COUNCIL #2
MARITIME FEDERATION
OF PACIFIC
REVELS CAYTON
Secretary

uopwa—34

c/o Alaska Salmon Company
Red Salmon Company
Alaska Packers Ass'n.

I want to direct your attention, Mr. Cayton, to that memorandum to the union dated May 2, 1940. Did you send that memorandum to the unions?

A. Well, there is one. It is divided into two sections here. There is a memorandum to all unions.

Q. Were copies of this To all Unions sent to the Packers?

A. Yes. This was. (Indicating) This Memorandum to All Unions.

Q. Those are just the letters identifying the Memorandum, are they not, Mr. Cayton?

A. Yes, I guess that is true.

Q. This is a memorandum of May 2, 1940, addressed Memorandum To All Unions, being unions in the District Council Maritime Federation, Dis-

(Testimony of Revels Cayton.)

trict No. 2, signed by Revles Cayton, Secretary, outlining the union's position on the attitude of these negotiations. And this was sent to the following operators representatives: To Mr. St. Sure. To the Red Salmon. To the Alaska Packers. That is, these are the letters with which the memorandum was sent to the Packers, is that correct?

A. That is right.

Mr. Resner: I want to offer this as Claimant's next in order, Mr. Referee. They are together.

(Received in evidence as Claimant's Exhibit No. 19) [102]

CLAIMANT'S EXHIBIT No. 19

May 2, 1940

Memorandum to all Unions

This afternoon in the office of District Council #2 of the Maritime Federation of the Pacific a meeting was held at which all of the Unions who engage in the Alaska Fisheries were present. There was a general discussion and resume regarding the negotiations being carried on between the negotiating committees of the various unions and the representative of the Packers.

After a lengthy discussion it was the consensus of opinion that the Packers have evinced no desire to engage in the Alaska Fisheries this year. In making a statement such as this no positive basis for the statement could be given, but drawing upon the history of negotiations for many years last past,

(Testimony of Revels Cayton.)

no other conclusion could be drawn from the facts presently before us.

All of the unions have virtually agreed to accept the basic rates of pay paid by the Packers in 1939 and suggested that there be various clarifications of certain ambiguous portions of those contracts. There was only one other important factor in negotiations to be considered and that is the request of the unions that the residents of Alaska be paid on the same basis as those workers who go to Alaska for the salmon season.

We have referred in this memorandum to the "negotiations" between the unions and the canners. The use of the word "negotiations" is probably a misnomer. There have really been no negotiations; that is not due to any fault on the part of the unions, but is due to the recalcitrant attitude of the canners in apparently delegating full authority to J. Paul St. Sure, their attorney, who has been supplied with a series of "yes" and "no" answers and beyond those answers he will not go. So that the prior custom of sitting around a table and discussing the various aspects of contracts has, at least for this season, been eliminated. Thus the element of personal contact in negotiations is entirely lacking; there has been no real discussion and no real bona fide attempt on the part of the canners to enter into agreements.

In view of this conduct on the part of the Packers we have been forced to come to the above conclusion that the packers have no real desire to go to

(Testimony of Revels Cayton.)

Alaska this season but are pretending they wish to operate their canneries only for the purpose of endeavoring to reduce wages approximately 20% and at the same time eliminate many gains and improvements in working conditions that the workers in the industry have enjoyed for many years.

We have heard, and on fairly good authority, that the packers have been informed that if they do not operate this season, and through such operations contribute certain taxes to the territory of Alaska, that next year increased adjustments will be made in the Alaska taxes in order to compensate the territory for the willful refusal of the packers to operate in the 1940 season. Undoubtedly, part of their present plan is to make their offers to the various unions so unattractive that the unions will not accept the terms of the packers and thus the packers will be able to blame the unions for the inability of the packers to engage in the fisheries, and use this excuse as a defense and argument if the territory should increase taxes on the packers. This statement regarding the taxes may not be true, but if true, it certainly would be a reasonable part of the plan of the packers in making their offers so unattractive that the unions would not accept them.

The packers have set May 3rd at midnight as the deadline for entering into an agreement. We sincerely hope that they want to enter into an agreement, and all negotiating committees of the various

(Testimony of Revels Cayton.)

unions, including this Council, stand ready to meet with the Packers at any and all times between now and midnight tomorrow or any further time to which they wish to extend their so-called negotiations.

Fraternally yours,

REVELS CAYTON

Secretary

uopwa—34

May 3, 1940

J. Paul St. Sure

Alaska Salmon Industry, Inc.

230 California St.,

City

Dear Sir and Brother:

You will find enclosed copy of a memorandum to all unions that was sent out last night; also carbon copy of a letter sent to A. E. Harding in reference to the position taken by our Council in connection with the opening of the Karluk cannery.

Fraternally yours,

REVELS CAYTON

Secretary

uopwa—34

(Testimony of Revels Cayton.)

cepted; and, I believe, that the Packers did likewise.

Q. I show you that wire, Mr. Cayton, and ask you if that is the wire you received? (Indicating)

A. That is the wire.

Mr. Resner: This is a wire from Robert W. Brewer, Chairman of the Maritime Labor Board, directed to Mr. Cayton, Secretary of the American Federation of Labor, District Council No. 2, Balboa Building, San Francisco, dated Washington, D. C., May 3, 1940, offering the services of Mr. Gertz in these negotiations.

I offer this as the Claimant's next in order.

(Received in evidence as Claimant's Exhibit No. 20)

CLAIMANT'S EXHIBIT No. 20

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WASHINGTON DC 3 248P

Revels Cayton—Secy Maritime Federation of the Pacific District Council #2 Balboa Bldg

1940 MAY 3 PM 2 57

Having been advised by its representative Mr. W T Geurts that controversy exists between the workers whom you represent and the Alaska Salmon Industry Incorporated which threatens to interfere with the free flow of waterborne commerce. The Maritime Labor Board hereby proffers the services of its mediator Mr. Geurts in the hope that he may

(Testimony of Revels Cayton.)

be of assistance in resolving the questions at issue into a mutually satisfactory agreement. The Board takes this action in the public interest and in conformity with the duties imposed upon it by Title X of the Merchant Marine Act of 1936 as amended.

ROBERT W BRUERE

Chairman Maritime Labor
Board.

Q. You had that meeting. What was said?

A. We went over the various status's of negotiations in the various unions. I think that it can be agreed here by Mr. St. Sure and Mr. Moore that the main ones we were interested in was the question of the fishermen and reduction that the fishermen were asked to take. [103]

Q. What kind of reduction was that?

A. I think it amounted to about 17%, I am not sure, on the price of fish.

Q. 17% reduction over last year, the 1939 season?

A. That is right. And negotiations shaped up this way. If the fishermen could be gotten over that hump, well, the rest of the unions wouldn't be difficult to settle with them for this reason—that the fishermen and cannery workers constitute the unions whose very life depends upon the Alaska season. The rest of the unions are not so dependant on the Alaska season, inasmuch as they can find

(Testimony of Revels Cayton.)

other means of work. But these men follow the industry and they are pretty much up against it if they don't go to Alaska. Therefore, whatever agreement would be reached by these two major companies—not companies, two major unions—we the other unions would immediately sort of set the sails in accordance with that progress. And if the 17% could be gotten over it would be a very easy matter, and the Company would at the same time accept the 1939 standards for the rest of the union the season would have been on. There would be no question about that.

Q. In other words, at that time, Mr. Cayton, I understand your testimony, you told Mr. St. Su and Mr. Moore that so far as the other unions were concerned, including the Alaska Cannery Workers Union, they would go on the basis of 1939 San Francisco Agreements? A. Yes.

Q. If they could come to their agreement with the fishermen and not cut them below last year?

A. If the fishermen could have been gotten over and the companies would have accepted 1939 agreements for last year it would have been clear sailing.

Q. For all these men that went last year?

A. That is right.

Q. Mr. Cayton, as Secretary of the District Council, whenever any of your unions are engaged in strike that matter is taken up through the Council, is it not? A. Yes.

Q. And approval obtained from the Council?

A. Yes.

(Testimony of Revels Cayton.)

Q. Now, in connection with this current 1940 Alaska fishing season was there ever any talk of strike?

A. Not that I know of.

Q. Did any of the unions or the Council declare any strike or authorize any strike?

A. No.

Q. In other words, there is no strike that has been declared against the Alaska Salmon Industry?

A. We didn't have agreements with none to strike about. [104]

Q. And none of the members of any of the Unions affiliated with your Council have done any work in Alaska this season, have they?

A. No, we got froze out complete.

Q. What is the attitude of the unions today, Alaska Cannery Workers Union, with regard to the season? On what terms are they willing to go now and have they been willing to go?

A. Well, all the unions would go for 1939, if we could get it.

Q. They would go tomorrow?

A. Sure we would. We would have gone that night.

Q. May 3rd?

A. Yes.

Q. Before the deadline?

A. Certainly.

Q. That was before the deadline?

A. Yes.

Cross Examination

By Mr. Madison:

Q. Mr. Cayton, as Coordinator for the Maritime Federation Bay District Council No. 2, how many of these meetings here did you attend?

(Testimony of Revels Cayton.)

A. I attended three meetings.

Q. How many with Mr. Paul St. Sure?

A. To my best knowledge, three meetings.

Q. At which Mr. St. Sure was present?

A. That is right.

Q. And was one of these meetings with Mr. Gertz, the Federal Mediator?

A. That is right.

Q. Now, as I understand it, the meetings that you have reference to where bad faith was employed were the three meetings you have referred to?

A. No, not completely. You see, as Coordinator I had my finger tips on the reports almost daily. In fact, whenever the unions got through negotiating they telephoned me on arriving back to their union hall just what progress they made. So, I would say, I had my fingertips on the general pulse of the thing more than any one individual.

Q. In other words, you base it on those three meetings and also on the reports you got from the unions, themselves, who had been in the negotiations?

A. That is right.

Q. Now, as I understand it, one of the things you mentioned particularly was the fact that these meetings were not held with anybody who was familiar with the actual conditions in Alaska. Is that correct?

A. It was our opinion that much more progress could have been made, though I don't say that

(Testimony of Revels Cayton.)

agreements could not have [105] been reached by Mr. St. Sure. I do think it was the opinion of the unions, and as our letters there will show, that much more progress could have been made had we had a practical man who knew, for example, something about Alaska to work with. For example, I telephoned Mr. Tichenor when the first season was called off.

Q. You mean the Central Alaska?

Mr. Resner: Central and Southern.

A. That is right. And told him why on earth didn't he get somebody who knew something about Alaska up there? Who knew something? And why he and others didn't sit in? And they would sit down and didn't challenge the unions with ultimatums. We could get somewhere! And *we* didn't commit himself very much in regards to it, as to introducing or having someone besides the attorneys sit in.

Q. Now, in prior years before the formation of this Alaska Industry, Salmon Industry, Mr. Tichenor has conducted the negotiations for the Alaska Packers, has he not? A. That is correct.

Q. Have you been sitting in with these negotiations?

A. As Vice-President of the Council last year I assisted, acted as assistant to the Secretary, Mr. S. R. Brown, and sat in all the coordinating meetings and was familiar with it.

Q. You didn't sign it?

(Testimony of Revels Cayton.)

A. I think I sat in one or two meetings with Mr. Tichenor on behalf of the Marine Cooks and Stewards. I was an official of the Marine Cooks and Stewards at that time.

Q. Then, you don't know whether Mr. Tichenor, also, had to refer matters back to his company when the questions came up, do you?

A. Let me make clear what I am getting at. When you work on an agreement you can sit down over a table and it is the attitude in which you sit down over the table. If you say, "We want so much money for coffee time, here," and, "So much money for overtime, there," And, take some of the practical men who have been to Alaska? They say, "No. You know, it doesn't take that much time. It takes that much time there." And the union says, "Maybe that is right. We will go half way." And then you reach an accord. But you do that on the basis of persons having some actual experience and actually working on the problem confronting the thing. And when you say, "Somebody rope a line here," and he doesn't know whether it is a hook or sinker, you can't negotiate with people like that. We don't try to go in Court and do things. We say they can have lawyers and think they should to protect their [106] interests, but along with the lawyer should be at least one practical person who has been somewhere north of San Francisco to be able to negotiate and work out an agreement. And when you don't have such practical negotiations, then negotiations become a series of high powered maneuvers. And that

(Testimony of Revels Cayton.)

is what this whole negotiations was. There wasn't any time they went down and sat over a table, according to the reports of the Committees, and where they discussed pro and con whether this should be granted or that should be granted.

A general policy was established and formed at the very first meeting there has got to be substantial cuts. And that is the score!

Q. Did they explain why they wanted substantial cuts? A. Yes. Said they was not making any dough.

Q. And they said they wanted substantial cuts? Took that position throughout the negotiations?

A. That is correct. In all honesty it is correct.

Q. They made that statement? There is no question in your mind about it?

A. Well, the best evidence of it—there was no season!

Q. No offer was made for substantial cuts?

A. For 1939 Agreements the unions said. They felt that.

Q. What union are you referring to now?

A. I am referring to all the unions, including the Alaska Cannery Workers Union. If they would have given the fishermen the 17%, and offered 1939 agreements to the rest of them? If they would have made this offer, "We will go for 1939 agreements", the union would have snapped at it.

By Mr. Resner:

Q. 1939 San Francisco you are talking about, it is?

(Testimony of Revels Cayton.)

A. Yes, sir. They would have snapped at it!

By Mr. Madison:

Q. Now, in spite of the fact all the unions were told the employers wanted reductions from the 1939 agreement—that is correct, isn't it?

A. I didn't get that.

Q. It is a fact, isn't it—I think you have already testified to this—all the unions were told that the employers weren't making any money and that they wanted reductions from the 1939 agreement?

A. That is right.

Q. No offer was made by the union at any stage of the game for anything less than the 1939 agreement, was there?

A. They don't! Unions are not in a practice of cutting down on gains that they have already got.

[107]

Q. I understand that. But the answer to my question is No?

A. The answer to your question is no.

Q. Now, do you know of any unions of your own personal knowledge that offered to go to Alaska on the 1939 San Francisco agreement?

A. Yes.

Q. Which? And when was the offer made?

A. Let me make this clear. There are numerous unions that would have gone—I mean, made the statement.

Q. To you?

A. Not only—wait just a moment, please! First, that night when we were there with St. Sure it

(Testimony of Revels Cayton.)

was stated there to them and was generally looked on and agreed there, I think, that if the fishermen should be gotten over and such an offer would be made for the 1939 agreements to the rest of the unions that they would all accept it. There was no doubt about that.

(The Reporter read the last question.)

A. The Alaska Fishermens Union wanted to go for the 1939 agreement, that is, the same price on fish provided that they could have certain small adjustments made. This was later accomplished in Seattle. These adjustments were made and they went. The whole central issue, of course, was the question of the price. And if they could have got the 1939 price they would have gone, and adjustments would have been very trifling.

Q. Isn't it a fact, if I may interrupt you there, that the Alaska Fishermen offered to the employers to go on the 1939 agreements without any conditions? And, if so, when was the offer made and to whom? A. Without any conditions?

Q. Yes?

A. You see, if you are going to build up this question over tradition, like big conditions? Or on to the 1939 agreement, like a big thing?

Q. I am not trying to build up anything. I am just trying to get my questions answered.

A. I am trying to answer it for you. For example, one of the things they wanted in addition to the 1939 Agreement was some lines so that when the scows came along to unload their fish these

(Testimony of Revels Cayton.)

safety lines would be there to keep the men from possibly being hurt. That is one of the things they had to put up a big beef, and one of the conditions they wanted. And the conditions they put on it were things of this nature, things that could be adjusted very simply. The thing negotiators said they couldn't understand why they weren't adjusted should have been adjusted. So, if you put it that way, you can [108] see the conditions did not amount to much.

By Mr. Resner:

Q. Mr. Cayton, when you use this word "beef", you mean controversy or argument or difference of opinion?

Mr. Madison: I think "beef" has become well known in the English Language in the last few years.

Referee Roden: *I* will soon be in the dictionary, I guess.

A. I can go on with some of the other unions, if you wish?

By Mr. Madison:

Q. That is the best answer you can give to my question?

A. Well, I think that is the answer, yes.

Q. What is the next union?

A. The Alaska Cannery Workers. 1939 agreement here out of Frisco would have been satisfactory, but they wanted to go for! If you fellows could have got 1939 out of Seattle, which is a sub-

(Testimony of Revels Cayton.)

stantial reduction, well, it would have been o. k., I suppose, with you; but the men wanted 1939 out of San Francisco. In other words, they would have gone for what they had last year. And the Packers knew it as well as we knew it. If they said, "O. K. boys, you go as you went last year." We would have been on those ships so fast it would have made your head swim.

Q. Do you know if that offer was communicated to the Cannery any time prior to May 29th, as was testified to yesterday by four five witnesses on the stand?

A. Alaska Cannery Workers?

Q. Alaska Cannery Workers Union?

A. That is the position they were taking in the coordinating committee.

Q. The question is, When was it communicated, if you knew? Whether it was communicated or not? You said you knew it was communicated, and I asked you if it was communicated prior to May 29, 1940?

A. I am not going to say it was communicated, because I was not at the meetings and nothing put in writing. That is the thing they reported to the negotiating committee.

Q. And that is all you know about it?

A. Yes.

Q. And that is the same with all the rest of these unions? A. That is right.

Q. Now, we get down——

(Testimony of Revels Cayton.)

A. (Interrupting): May I make one exception to that? And that is the Alaska Fishermans Union, which is the third meeting. There was one at the beginning of the season and one [109] in the middle—and that is the meeting I was in with the Alaska Fishermans Union and went through their entire agreement with them and Mr. St. Sure. So, I can speak first hand in connection with that union.

Redirect Examination

By Mr. Resner:

Q. What date was that, Mr. Cayton?

A. I don't know.

Q. Approximately?

A. Things were happening so fast around there. When was that, Mr. St. Sure, about?

Mr. St. Sure: April 30th.

A. April 30th.

Q. That is when the fishermen communicated their offer?

A. Yes. That is the meeting I sat in with them, I think.

By Mr. Madison:

Q. That is the meeting you testified to the offer before. You testified they would go for 1939 under certain conditions, you say are unimportant.

Now, I think that you testified in regard to this meeting with the Maritime Commission with Mr. Gertz. Do I understand that at that meeting there was communicated to Mr. St. Sure or to the repre-

(Testimony of Revels Cayton.)

sentatives of the Cannerymen present that if this 17% reduction that they were asking for could be gotten out of the way that all the rest of the men would go on the 1939 agreement. Was a statement to that effect made or was it just your understanding?

A. Here is what happened. We went over what the various unions wanted and what not. And, you got to figure how negotiations are conducted. A union raises certain demands and then certain conditions arise. And then they review those demands in the light of those conditions. And then they slack off. It doesn't look so good. And then they accept a compromise. And it goes that way. You dicker around. That is the way negotiations are conducted. Now, it was the consensus of opinion there, and I think Mr. St. Sure will back me up when I say he and Mr. Moore were of the opinion if the fishermen would be gotten over, that hump gotten over, the rest of the things could be adjusted. And it was stated by myself, "If you fellows can just get over with the fishermen, we can adjust the rest of this stuff." And there is time and time again I stated that to them. And it was the opinion—I am not supposed to be quoting Gertz, he can speak for himself. I will only speak for myself. But it was obvious from that meeting that if the Packers could get a situation like this: whereby the other unions would accept 1939 out of Seattle, which would amount to the cut reduction for those and the fishermen would accept [110] the

(Testimony of Revels Cayton.)

17% why, they would be able to go. I mean, that was pretty clear what their position was.

Q. No one made any statements to that effect?

A. Certainly, because that is what they were asking from practically all the unions.

Q. That is what the employers were asking?

A. That is right.

Q. But there was no indication by any of the unions that they would do that, of course?

A. No. That is correct. And, this was almost their platform: 1939 out of Seattle and fishermans 17% reduction.

Q. Now, all these various things were discussed at this meeting with Gertz, weren't they? All the conditions *rasselled* around with? And there was discussion there?

A. That is true. I would like to also state it came to my attention there. I can say at the time we were discussing them that I think the whole report in connection with why the season didn't go through has already been written.

Q. That is your opinion?

A. More than opinion.

Examination by Referee Roden:

Q. What do you mean by 1939 out of Seattle?

A. Well, you see, 1939 out of Seattle was at the lower rate. The scale, you see, of salary was lower, and what not, in Seattle than 1939, out of San Francisco.

Q. You mean, 1939 Seattle Agreement?

(Testimony of Revels Cayton.)

A. Yes, that is what I mean. This would have—well, the fellows have tried to estimate what reduction that would be. It would vary. Some unions as much as 20%, and what not, in what they got out of San Francisco in 1939.

Q. No agreement was reached with the fishermen?

A. The fishermen? That night we went over there, at midnight, and Mr. Gertz telephoned them and asked them "Anything new?" at midnight, and they said, "No, nothing new." And the fishermen rejected the 17%. Now, that was the key, because the Fishermens Union. You see, Mr. Commissioner, the Unions, like the sea going crafts, Firemen, Cooks, and these unions—have other means for their men to go to work, you see. So, if the fishermen ever reached an accord and if they would have granted the 1939 for the Cannery Workers, well, then the heat would have been on the unions and the other unions wouldn't have stood in the way because then we would have called a Council meeting and gone after them. The Packers know about as much as the unions and as we do and they know real good politics about these unions—and that is true!

Recross Examination

By Mr. Madison:

Q. It is a fact, isn't it, in these negotiations all the members [111] of the Maritime Federation have a definite understanding and agreement

(Testimony of Revels Cayton.)

that one union won't sign up until they are all satisfied to sign up?

A. Yes. But you can't take it——

Q. (Interrupting): Is that a fact or not?

A. The unions before anyone signed try to reach an accord generally. And the factors as to what makes them reach an accord is the thing I am stressing here and which can't be underestimated.

Q. The fact of the matter is, isn't it, you have always taken, the Maritime Federation has always taken, the position one union won't sign up until all members of the American Federation are ready to sign up?

A. We sign jointly.

Q. And you advise the Packers to that effect?

A. Yes. And the very fact we do this would in this case be a safeguard for the two big unions, because once they were ready to sign then they would be able to move as a group and that would mean pressure would be on all the smaller ones to come in. And unions like A.C.A. and Radio Operators are continually quarrelling because they say, "We are one of the small unions. When the big unions sign up we have pressure on us." So, signing jointly wouldn't work against the Packers, but in their favor. Because they would have the pressure of forcing other unions in line, which they have done on many occasions, because it is their policy to sign with the big ones as in previous years and put the heat on the small ones.

By Mr. Resner:

Q. You are saying that it has been their policy?

(Testimony of Revels Cayton.)

A. Policy of the Packers, yes. They know that game!

By Mr. Madison:

Q. But the Cannery Workers won't sign until the Fishermen are ready to sign. Isn't that it?

A. The Fishermen are ready to sign?

Q. Yes.

A. The Cannery Workers won't sign until everybody is ready to sign—neither will the Fishermen.

Q. And the Fishermen won't sign until the Cannery Workers reach an agreement?

A. No one will sign without the other.

Q. Nobody will sign until each union is ready to sign?

A. That is correct. You see, if we didn't have that sort of thing you could take the Radio Operators of about fifty men and they would be able to hold the whole season up. And neither can, oh, any of the other unions so vitally involved. It, in other words, makes Alaska Cannery [112] Workers and Alaska Fishermen the ones who practically determine the season.

By Mr. Resner:

Q. So far as the unions are concerned?

A. That is right.

Mr. Madison: No further questions.

Redirect Examination

By Mr. Resner:

Q. Mr. Cayton, Mr. Madison asked you about

(Testimony of Revels Cayton.)

whether you knew whether the offer to go on the 1939 San Francisco Agreement had been communicated to the Packers prior to May 27th. I want to direct your attention to that meeting of May 3, 1940, with Mr. St. Sure and Mr. Moore at which Mr. Gertz was present.

A. Wait a minute, Herb, I didn't follow you?

Q. Mr. Madison asked you about whether or not you knew whether the offer of the Cannery Workers to go to Alaska on the basis of 1939 San Francisco Agreement was communicated prior to May 27th of this year?

Mr. Madison: May 29th.

By Mr. Resner:

Q. May 29th? In other words, he set that as the date, wanting to know whether before that date the Cannery Workers had communicated their willingness to go on the basis of 1939 agreement. In that connection I am drawing your attention to the meeting of May 3rd you had with Mr. St. Sure and Mr. Moore at which Mr. Gertz was present. Do you recall what was said there at that time by you, representing the union?

A. It was said to me there and was conveyed, I think, and was a general understand there if the fishermen could be gotten over and they would give the 1939 agreement to the rest of the unions the season would be on.

Q. 1939 San Francisco?

A. 1939 San Francisco—the season would be on.

(Testimony of Revels Cayton.)

By Mr. Madison:

Q. Said by whom? A. I said it.

Q. You made the statement to Mr. St. Sure that?

What was that agreement?

A. Here is the statement. I said, "If you can get over the fishermen the rest of this whole thing can be adjusted mighty easily."

Q. And that is all that was said about what Mr. Resner is inquiring about?

A. That is right. [113]

By Mr. Resner:

Q. And what was meant by that statement?

Referee Roden: We can find that out ourselves.

By Mr. Resner:

Q. Mr. Cayton, I want to draw your attention to a letter of April 12th. A. Yes.

Q. That is a letter of April 12, 1940, signed by yourself and addressed to the Alaska Packers Association? A. That is right.

Q. On the subject of these negotiations?

A. Yes.

Mr. Resner: I want to offer that as Claimant's next in order, Mr. Referee.

(Received in evidence as Claimant's Exhibit No. 21.)

(Testimony of Revels Cayton.)

CLAIMANT'S EXHIBIT No. 21

San Francisco Bay Area District Council No. 2

Maritime Federation of Pacific

Room 502—593 Market St., San Francisco

April 12, 1940

Alaska Salmon Industry, Inc.

230 California Street

San Francisco, California

Gentlemen:

The District Council #2 of the Maritime Federation of the Pacific replies to your letter of April 11th which we received this morning.

We might state at the outset that the negotiations this year seem to be principally a matter of letter-writing and publicity in the press carried on by the Packers. This is a departure from previous practices and one which, as we see it, is not conducive to speedy settlement of our differences. We would much rather sit down around the table with the principals involved and their counsel, and mutually hammer out an agreement rather than merely deal with one who possesses little if any authority from his principals.

The differences presently existing between the Packers and unions are in the main minor ones. The problem involving the Machinists is a matter of adjustment of some wage disputes. For you

(Testimony of Revels Cayton.)

to magnify this difference into titanic proportions does not bespeak good faith on your part.

The above comment likewise applies to the American Communications Association. With respect to the differences between yourselves and the Alaska Cannery Workers, it is true that locally they, and with your consent and approval, withdrew from negotiations for the reason that the representatives of this union and your organization are jointly negotiating in Seattle.

As we stated in our letter of the 9th we are still ready, able and anxious to continue negotiations and if you will abolish your recalcitrant and arbitrary attitude and conduct negotiations as they have been in the past, agreements could be entered into right away.

It is the opinion of the committee that through your series of statements and maneuvers you are simply endeavoring to force through a contract by delivering ultimatum after ultimatum and any impasse that apparently has been reached was not made or created by any of the unions involved.

The matter of the elimination of the \$75.00 penalty clause to the Alaska Fishermen's Union is a matter of importance for them. This is a condition that they have enjoyed for many years. If as you stated in your letter you are willing to withdraw your demand that the \$75.00 penalty clause be eliminated there is an indication here that you desire to negotiate. We suggest that you extend your

(Testimony of Revels Cayton.)

willingness to cooperate with the fishermen to the other unions.

At the start of these negotiations your attitude with respect to the working hours of the Marine Cooks & Stewards was unacceptable to that union. Your apparent attempt to make some encroachments upon the 8 hour day are not in harmony with the present attitude of employers the country over to a reasonable work day of 8 hours and overtime thereafter. This is a point that should have caused no difference at all.

With respect to the Alaska Cannery Workers Union being deprived of 35 days of work. This is an arbitrary position you have taken and one for which the industry as a whole should answer. This industry must provide employment for the maximum number of men and the sole consideration of the Packers should not be the payment of dividends. But if you do not presently intend to hire any cannery workers until May 22nd there is no logical reason why you should presently insist upon any agreement, memorandum or otherwise, with the cannery workers when with your express approval your own representatives are presently conducting negotiations in Seattle with this union for the purpose of entering into an agreement.

With respect to your charges of bad faith, we repeat what we have mentioned heretofore, namely, that negotiations cannot be satisfactorily carried on through a minister without a portfolio.

(Testimony of Revels Cayton.)

In conclusion may we again state that we do not wish to see any of the season lost in Alaska. We entreat you to revise your attitude towards these negotiations and to call a meeting of all unions involved at the earliest convenience with the principals involved as well as their counsel and we assure you that we will enter the meeting room with an open mind and with a sincere desire to conclude an agreement.

Very truly yours,

BAY ARE DISTRICT COUNCIL #2, MARITIME FEDERATION OF PACIFIC.

(Signed) REVELS CAYTON,

Secretary.

RC:gl

uopwa-34

c/c Alaska Packers Ass'n.

Alaska Salmon Company

Red Salmon Company

Mr. Resner: I think that is all.

A. Could I offer this one statement?

Q. Yes.

A. That is, when speaking for the unions in the capacity, Mr. Referee, of Council Secretary it is necessary that I speak guardedly, like I am meeting with the employers, you see. I don't have the authority to commit a union to do this or that,

(Testimony of Revels Cayton.)

you see. I act merely in the capacity of a coordinator; therefore, I could not come out and say to them and the reason I didn't, "If you settle up with the Fishermen the rest will go for 1939 agreements." If I did say that some of the other unions who had slight differences would put me on the spot for it. What I had to say was put diplomatically and in negotiating terms. Well, he knew what I was saying. I was saying, "Sure, these guys would go for it!"

RESPONDENT'S WITNESSES

PAUL ST. SURE,

Financial Center Building, Oakland, California, being duly sworn, testified as follows:

Direct Examination

By Mr. Madison:

Q. What is your name, please?

A. Paul St. Sure.

Q. And your address?

A. Financial Center Building, Oakland.

Q. Mr. St. Sure, will you state generally what the Alaska Salmon Industry, Inc., is?

A. Alaska Salmon Industry, Inc., is a corporation which was formed early in 1940. I had indirect knowledge of its formation, but I have seen the Articles of Incorporation and By-Laws and it was organized for the purpose of handling labor relations matters and labor negotiations for the Alaska

(Testimony of Paul St. Sure.)

Salmon industry on the [114] Pacific Coast, particularly, where operators are out of San Francisco, Astoria, Portland, and Seattle.

Q. What was your connection with them?

A. I was employed by the Alaska Salmon Industry early in March, 1940, to represent the three San Francisco Operators, that is, the Alaska Packers Association, the Alaska Salmon Company, and the Red Salmon Company, to handle negotiations in San Francisco, the principal office of the corporation being at Seattle. And, as a matter of convenience, such negotiations as would be handled in San Francisco would be handled by me; and Seattle Office was to handle the negotiations of the northwest.

Q. And Mr. Moore, who has been referred to in the testimony before, you would probably refer *as* whom?

A. He is an attorney associated with me in the practice of law.

Q. His full name is what?

A. Edward H. Moore.

Q. Now, Mr. St. Sure, in the capacity you have just described, you did conduct negotiations with the unions which led up to the final decision as to whether the Alaska undertaking would be taken this year or not, did you not?

A. That is correct.

Q. And what was the first step in connection with these negotiations?

(Testimony of Paul St. Sure.)

A. I believe, on the 6th of March, 1940, a letter was addressed to each of the unions with whom the San Francisco Packers, that is, the three companies I have mentioned, informing the unions that the Alaska Salmon Industry had an office at 230 California Street, San Francisco, and that negotiations for the 1940 season would be conducted by myself and Mr. Moore at that office requesting the unions to communicate with us for the purpose of arrangement of appointments for negotiation meetings.

Q. Have you a copy of that letter?

A. I don't seem to have a copy of that letter but on the following day—pardon me, I do not have a copy of that letter.

Q. Go ahead.

A. Well, the following day a committee with Mr. Cayton.

Mr. Resner: You are referring to a letter of March 6th, Mr. Madison? I think that it is in evidence.

By Mr. Madison:

Q. Then the letter to which you have referred is the letter of March 6th, which is now in evidence?

A. I assume so, if that is the statement of Counsel. On the following day a committee of representatives of the unions affiliated with the [115] Maritime Federation of the Pacific, that is, District Council No. 2, with Mr. Cayton acting as Secretary and Coordinator, called at the office and advised Mr. Moore and myself that they were members of this Coordinating Committee and stated that they de-

(Testimony of Paul St. Sure.)

sired specifically to have something more by way of confirmation of our authority. They wanted a specific authorization from each of the San Francisco Packers indicating that Mr. Moore and I were authorized in the name of the Alaska Salmon Industry to negotiate 1940 contracts. They also informed us at that time that there were certain pending claims arising out of the 1939 operations which had not been settled and they desired us to be on notice there would be no negotiations conducted by any of the unions affiliated with the Maritime Federation of the Pacific until those claims had been paid. I believe that was the extent of the meeting for discussion generally we had on the 7th.

Q. I show you a document here purporting to be signed by Alaska Packers Association and Alaska Salmon Company and Red Salmon Company and I ask you if that is the document to which you refer? A. It is.

Referee Roden: We have that in evidence.

A. On the 8th of March there was a specific authorization sent to the unions signed by each of the canners in the form of documented evidence with that; or concurrently was sent a letter on the date of March 8th addressed to each of the unions, and also a copy to Mr. Cayton, Chairman of the Alaska Coordinating Committee, referring to the meeting on the 7th and to the authorization under date of March 8th, which was enclosed.

Mr. Madison: I would like to offer this letter in evidence.

(Testimony of Paul St. Sure.)

Mr. Resner: I think that is in, Mr. Madison.

Mr. Madison: May I suggest this thing, Mr. Examiner, we introduce this in evidence and where there appears to be duplications we eliminate them? That will save us from going back and checking them.

Referee Roden: Yes.

Mr. Madison: Then, subject to that suggestion, which has been approved by the Examiner, I offer this letter of March 8th in evidence and mark this as Canner's Exhibit No. 1, or A.

Referee Roden: Yes.

(Received in evidence as Respondent's Exhibit A.) [116]

CANNERS' EXHIBIT A

Registered Mail

Copy

September Thirtieth, 1939

Alaska Cannery Workers' Union,
32 Clay Street,
San Francisco, California.

Karluk and Chignik Operations—1940
Gentlemen:

You will recall that last Spring the claim was made by members of your organization that they were not fully informed, consequently were unaware that the Alaska Packers Association did not intend to operate Karluk and Chignik canneries in a similar manner as heretofore, and that the length

(Testimony of Paul St. Sure.)

of the season had been curtailed, with the result that your members had prepared themselves for a long season, and upon sailing of the first vessel for Karluk and Chignik, found that they were not to be transported to those locations until later.

In order to overcome working a hardship on your members the Alaska Packers Association agreed and did take them on the first expedition.

Please inform your members that, although they were employed for a longer season in 1939, it is the intention of our company to curtail operations at both Karluk and Chignik, also the length of the season. Therefore, your membership should assure themselves, early in the Spring of 1940, the extent of our operations at those plants and approximately the length of employment that we shall be able to offer them.

Yours truly,

ALASKA PACKERS ASSOCIATION,

A. K. TICHENOR

Vice President and General
Manager.

AKT/FS

[Endorsed]: Filed May 7, 1943.

By Mr. Madison:

Q. Mr. St. Sure, going back a minute, there was a letter written on September 30, 1939, in re-

(Testimony of Paul St. Sure.)

gard to the curtailment of Central Alaska by the Alaska Packers Association. Have you that letter there?

A. I have a copy of that. I discussed with Mr. Tichenor and I believe it is a correct copy of which was sent by registered mail on that date.

Mr. Madison: I offer this letter as Canner's Exhibit B.

Referee Roden: Suppose we make this A? Then we will have it a little bit in chronological order? (Indicating)

Mr. Madison: Suppose we make this one A without renumbering that until we get back to it?

Q. Now, in November, 1939, the Alaska Packers Association notified the union the 1939 contract, including all memorandum contracts, terminated?

A. My understanding is several letters was sent to each of the unions with which contracts had been in effect during the 1939 season.

Mr. Madison: I believe that is in evidence, but I would like to mark it under the same understanding.

Mr. Resner: That is not in evidence.

Mr. Madison: Then, I will offer this in evidence and ask that it be marked B.

(Received in evidence as Respondent's Exhibit B.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT B

Registered Mail

Copy

November Second, 1939

United Cannery, Agricultural, Packing and Allied
Workers of America, Alaska Cannery Workers'
Union, Local No. 5, C.I.O.

32 Clay Street,

San Francisco, Calif.

Gentlemen:

This is to advise you that the undersigned, Alaska Packers Association, has elected, pursuant to the option given by section 37 of its agreement with you dated May 24, 1939, to terminate said agreement at the expiration of the 1939 season, as provided in such section 37.

This will confirm our understanding with you that the memorandum of agreement dated May 24, 1939, relating to the employment of tallymen, tally-captains, cannery clerks and other clerical employees, and the memorandum of agreement dated April 22, 1939, relating to the employment of cannery workers at Chignik and Karluk, were part of the principal agreement dated May 24, 1939, and are like-

(Testimony of Paul St. Sure.)

wise terminated at the expiration of the 1939 season in accordance with this notice.

Yours very truly,

ALASKA PACKERS ASSOCIATION,

Vice President and General
Manager.

EAM/FS

Mr. Resner: That is of November 2nd?

Referee Roden: Yes.

By Mr. Madison:

Q. Now, on November 8th the union acknowledged receipt of the notice and requested early negotiations for the 1940 contract.

A. I have a copy of a letter dated the 8th of November, which is a true copy of the original, received from the Alaska Cannery Workers Union.

Mr. Madison: I will ask this be introduced and marked Exhibit C.

Referee Roden: November 8, 1939 (Indicating).

(Received in evidence as Respondent's Exhibit C.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT C

Copy

Alaska Cannerey Workers Union
Local No. 5, C.I.O.
32 Clay Street,
San Francisco

November 8, 1939

Alaska Packers Association,
111 California Street,
San Francisco, California.

Attention: Mr. A. K. Tichenor

Gentlemen:

This letter will acknowledge receipt of your letter of the 2nd, in which you advise us of your desire to terminate our contract dated May 24th, 1939.

We wish to advise you, that on behalf of all of the members of our Union, for which said members we have been certified as the collective bargaining agent by the National Labor Relations Board, that we desire to immediately enter into negotiations with you for the 1940 salmon season.

Please be advised, therefore, that at your earliest convenience, we should be pleased to have our Negotiating Committee meet with your representatives in order to agree upon the working conditions and wages of the workers within our jurisdiction who

(Testimony of Paul St. Sure.)

will perform services for you in Alaska during the coming season.

Yours very truly,

GEORGE WOOLF,

President Alaska Cannery

Workers Union #5

GW:D

Registered Return Receipt Requested

Uopwa-34

By Mr. Madison:

Q. Now, on January 17, 1940, the union notified the three San Francisco Packers that it claimed jurisdiction over nurses, first aid men, embalmers, orderlies, and watchmen—was going to act as their agent. Did you receive that communication? [117]

A. Here is a copy of the letter, dated January 17th, addressed to each of the three canners.

Mr. Madison: I will offer this in evidence and ask that it be marked Exhibit D.

(Received in evidence as Respondent's Exhibit D.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT No. D

Copy

Alaska Cannery Workers Union

Local No. 5 C.I.O.

32 Clay Street,

San Francisco

January 17, 1940

Alaska Packers Association,

111 California Street

Alaska Salmon Company,

525 Market Street,

Red Salmon Canning Company,

64 Pine Street

Gentlemen:

This is to advise you that for the 1940 salmon season in Alaska we have, and pursuant to our certification by the National Labor Relations Board, we claim jurisdiction over the classifications usually referred to as nurses, first-aid men, embalmers, orderlies and watchmen.

During our negotiations for the coming season we shall act as the bargaining agent for these classifications for the purpose of having these classifications included in our general contract.

Please be advised that more than a majority of

(Testimony of Paul St. Sure.)

people working in the above classifications have made application to our union for membership.

Yours very truly,

GEORGE WOOLF,

President, Alaska Cannery

Workers Union #5

GW:D

Registered Letter

uopwa-34

Now, Mr. Examiner, I think this other exhibit should properly be marked Exhibit E.

(Indicating) That is the letter dated March 8th.

(Received in evidence as Respondent's Exhibit E.)

Q. Now, Mr. St. Sure, would you proceed and advise as to the next meeting with the union, or the next communication sent to the union by you in your negotiations with the union?

A. My recollection is either on the 7th or 8th of March there had been made an appointment to meet with the negotiating committee of the Alaska Cannery Workers Union for March 12th at two o'clock. And, I believe, on the 8th of March we received a telephone call from some representative of the Cannery Workers Union cancelling the meeting on the ground that the union was not going to negotiate in connection with any matters until all wage claims for the 1939 season had been settled as to all unions affiliated with the Maritime Federa-

(Testimony of Paul St. Sure.)

tion. And on the 9th of March we received a communication signed by Mr. Sam Young, Secretary of the Cannery Workers Union, Local No. 5, confirming the cancellation of that meeting.

Mr. Madison: I ask this letter be introduced and marked Exhibit F.

(Received in evidence as Respondent's Exhibit F.)

RESPONDENT'S EXHIBIT No. F

Alaska Cannery Workers Union
Local No. 5, C.I.O.

Affiliated to

United Cannery, Agricultural Packing &

Allied Workers of America

Committee for Industrial Organization

Maritime Federation of the Pacific

San Francisco District Industrial Union Council

International Labor Defense of the United States

George Woolf, President

Karl G. Yoneda, Vice-President

Raymond Aguirre, Secretary

32 Clay Street

San Francisco

Phone EXbrook 4871

March 9, 1940

Alaska Salmon Industry, Inc.

230 California Street

San Francisco, California

Att'n: Mr. Paul St. Sure

(Testimony of Paul St. Sure.)

Gentlemen:

Confirming our telephone conversation of yesterday, please be advised that the Negotiating Committee representing this Union has been instructed to cancel its appointment to meet with your Committee Tuesday, March 12th, 2:00 p. m., until such a time as the matter of the wage claims for the 1939 season have been settled.

Yours very truly,

[Seal]

SAM YOUNG

Secretary Alaska Cannery
Workers Union #5

RD

uopwa-34

Q. What happened then?

A. About the 27th of March we had a meeting with the Negotiating Committee for the Cannery Workers Union. They stated that they desired to present a contract for the 1940 season and discuss it—with the understanding, still, however, there would be no agreement reached and no actual negotiations until the claims had been settled for 1939, those being still unsettled at that time. And being then in the process of direct negotiation with the operators and not to the Office of Alaska Salmon Industry, Incorporated, they presented an agreement, a copy of which I hand you. (Indicating) I may state I believe that is a copy given us and not a copy of it.

(Testimony of Paul St. Sure.)

Mr. Madison: I offer this in evidence and ask that it be marked Exhibit G [118]

(Received in evidence as Respondent's Exhibit G.)

RESPONDENT'S EXHIBIT G

Agreement Between United Cannery, Agricultural Packing & Allied Workers of America, CIO, and the Alaska Salmon Industry, Inc., and Other Canned Salmon Operators

— 1940 —

This agreement, made and entered into between _____, a Corporation, for its _____ Cannery, the party of the first part hereinafter referred to as the Company, and the United Cannery, Agricultural, Packing & Allied Workers of America, CIO, in behalf of Local No., the party of the second part, and each and severally it is agreed:

Marginal Notation—O K.

Witnesseth

Section 1. (a) The Company agrees to recognize the Union as the exclusive and sole bargaining agent of all its employees engaged for Alaska salmon operations from the State of California, Oregon, and Washington, for the 1940 season in the capacities herein listed.

Cannery Workers and Other Classifications

First foreman

Second foreman

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(Tally-Captains

(Tallymen

Marginal Notation—Query see ACA contract
1939.

Storekeepers

Timekeeper

Cannery Clerk

Watchman

(Nurse

(Nurse and Embalmer

(First-aid men

(Orderly

Marginal Notation—New over 1939

Chief steward

Butcher (if used)

First cooks

Second cooks

First bakers

Second bakers

Night cooks

Cooks helper or kitchen helper

Vegetable men

Pot washer

Dish washer

Waiter

Marginal Notation—Balance is same.

Delegate

Head of Department (if used)

Relief men

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Iron chink men

Hand butcher and slimers

Can tester (hot)

Can tester (cold)

Solderer

Jitney driver in cannery

Truck driver (if used)

Class "A"

Scow men

Fish sorter

Bin man

Pew fish

Fish inspector

Conveyor man

Fish chopper

Filler feeder

Elevator man

Cooler loaders (can catch)

Salt men (4 or more lines)

Fish cutters

Supplying cooler to line

Cooler trucker

Hoister man

Retort man

Can washer

Brush washer

Can piler

Case piling (full)

Stitching and wiring

Box making

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Class "A"—(Continued)

Casing machine feeders & catchers

Hand labeling

Tin slitter and cutter

Can end and body supplier (4 to 5 lines)

Class "B"

Transfer men

Patching table

Clincher

Can end and body suppliers (1 to 3 lines)

Salt man (1 to 3 lines)

Shooting empty cans

Janitors

Empty can tester

Reform feeder

Can shop trucker

Watchman on line

Empty box piler

(b) The Company shall procure all employees who come under our jurisdiction from the headquarters of the Union's hiring halls for its Alaska cannery operations from the ports where the salmon Companies have headquarters.

Marginal Notation—Old.

(c) The Company agrees to recognize the Union as the exclusive and sole bargaining agent for its employees engaged in the cannery operations, hired in the Territory of Alaska for the 1940 season in

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

the capacities listed below, in sub-section (g) 1, 2, 3, 4, and 5.

Marginal Notation—Old.

(d) The Company shall procure all resident employees who come under the jurisdiction of the Union from the Union's headquarters or the Union's hiring halls in such areas where such headquarters or hiring halls are established. The Union shall furnish the Company with workers in the numbers and classifications agreed upon, and workers for each Company shall have preference of re-employment in the same Company.

Marginal Notation—Old.

(e) If additional workers are needed above the 1939 employees, in Alaska, such workers shall be furnished from the waiting lists of the Union for each particular cannery. If the Union has no waiting lists for such particular cannery the Company may hire from any available source, providing such employees shall become members of the Union or shall have received a permit from the Union within a period of time specified by the Union.

Marginal Notation—Old.

(f) Resident workers hired and working at a monthly or seasonal rate shall be classified in the same manner as non-resident cannery workers as specified in Section 1 (a).

Marginal Notation—Old.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(g) The following classifications of work shall apply to resident cannery workers hired and working on an hourly rate of wages.

1. Hand piling. (Where no elevators are installed in boats.)

2. Class "A"—Headers and feeders, iron chink men, unloading by sluicers or elevators from boats, fish sorters and relief men.

3. Class "B"—Delivering fish to iron chink elevators, sluicers, can catchers, skimmers, filler feeders, men in can loft and warehouse and on general can work, including lye wash and retorts; experienced full time strikers, where used; full time regular box piler, hand packers, and relief men.

4. Class "C"—Packing table, vacuum machine and tapper.

5. Class "D"—Feeding reformers and all other women in can loft and warehouse.

Marginal Notation—Old.

(h) In the event any classification is not specified or is known by other names, or new classifications are to be added of employees coming under our jurisdiction, wages, and benefits and the definite classifications shall be agreed upon and made part of this agreement and retroactive from date of embarkation.

Marginal Notation—Same.

Section 2. The Union in all cases shall be the judge and determine the qualifications of its members.

Marginal Notation—Same.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Section 3. The Union shall at the request of the Company furnish men for the respective canneries as are agreed, required, and indicated in the supplemental rider under the caption "Personnel". The Company shall make formal request for cannery crews at least fifteen (15) days prior to tentative departure for Alaska.

Marginal Notation—Same.

Section 4. (a) The Union claims jurisdiction, whether in plants or floating canneries, of the canning, processing, handling of the fish from the time the fish is run on the conveyors, to the fish bins and the several operations through which it passes until the finished product is canned, labelled, and packed either in cartons or cases, and delivered to the warehouses, vessels, and etc., including the making of cans, boxes and cartons, operating and feeding of the following machines, but not the upkeep or maintenance: Iron chink (gang knives, butchers, or cutters); filling machine feeders and helpers; clincher machines; stitching machines; and all other work that can body machines; pasting machines; can casing machines stitching machines; and all other work that has customarily been done heretofore, and not in conflict or encroaching on the jurisdictional rights of other Unions. Also, the processing, filleting, reducing, and the manufacturing of any of its by-products.

Marginal Notation—Same?

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(b) Jurisdiction and work claim of tally-captains, tally-men, cannery clerks and storekeepers, and cannery timekeepers, includes checking and/or issuing merchandise and supplies on and off vessels, floating canneries, shore plants, tallying and recording and responsibility of issuing receipts for fish delivered to a tally station.

Timekeeping and other clerical work, except work customarily done by yearly and steady employees, and clerical work coming within the scope of the radio personnel.

Any of the above mentioned classifications may be used alternately or in combination by mutual agreement, and men may do other work providing said work does not encroach on the jurisdiction of other unions, but expressly excludes routine cannery work and any and all work within the scope of the radio personnel. Auto or truck drivers may be used as outlined above as applying to tallymen, etc.

Only members of this Union shall be hired as watchmen, whose duties shall consist solely of watching quarters, warehouses, etc., on vessels, floating canneries, and shore plants, from the day of leaving until return.

Marginal Notation—Same?

Section 5. No person not a member or permit-person of the Union shall be allowed to perform

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

any work coming under the jurisdiction of the Union.

Marginal Notation—Same.

Section 6. The Company shall supply, for the purpose of employees putting up salt or smoked salmon for their private use, suitable quarters with running water, means of disposing of offal, and a smoke and storage house. Employees shall be permitted to bring back smoked and salt salmon without charge.

Marginal Notation—New.

Section 7. No employee shall be required to work or pass through a picket line established by organized labor, or to work where armed guards are employed during a labor dispute. A refusal to do so shall not be considered a violation of this agreement.

Marginal Notation—Same.

Section 8. The Company shall not discriminate against any employee for Union activities, race, color, or creed, or for lawsuits instituted because of dispute of contract.

Marginal Notation—Same.

Section 9. A list of all merchandise, with prices, intended for sale to members or residents on vessels, en route, or in Alaska, shall be submitted for Union consideration at least fifteen (15) days before sailing, and mutually agreed upon by the Union and the Company, and maintained at a standard and uni-

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

form price. When procurable, merchandise shall be obtained from fair concerns, and bear the Union label.

Marginal Notation—New.

Section 10. (a) The Union claims certain definite rights and benefits in behalf of its membership as outlined in this agreement, and these rights shall be upheld by the authorized Delegate, who shall act as a representative and spokesman of the Union, and in the event of a dispute or a misunderstanding, they will be vested with the authority to settle to the best of their ability all issues that may be brought to their attention. Further, Delegates are authorized and instructed that strict observance of all rules and regulations, hours, wages, and general conditions are observed. They shall endeavor at all times to settle all matters and issues in a satisfactory manner to all concerned.

Marginal Notation—Same.

(b) Delegates shall be recognized as Business Agents in the cannery, and is to devote his full time to and for this purpose.

Marginal Notation—Reworded.

(c) Any controversial disputes that cannot be settled at the cannery are to be adjusted and settled after the season at the port of embarkation of the expedition. Under no circumstances will Superintendents or agents of the Company be compelled to sign any disputed wage claims. However, in the

Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

event of a controversial dispute which is not settled between our Delegates and the Company agents, the matter may be referred to the Co-Ordinating Committee representing all Unions, or to the entire membership of working Unions of the expedition, but in the event of an obvious and apparent wilful violation of this agreement the Union reserves the right to strike, create a stoppage of work, or a refusal to work.

Marginal Notation—Clarification.

(d) However, in the event a verbal and mutual agreement or settlement is entered into, and not in conflict with any clause, section, or article of this agreement, it shall be reduced to writing and become valid and binding, and shall state that no co-ercion or intimidation was used in effecting a settlement.

Marginal Notation—Clarification.

Section 11. It is expressly agreed that neither the Company or its agents, nor the Union or its representatives, have the power or authority to change any of the provisions of this agreement.

Marginal Notation—Same.

Section 12. The Company shall recognize in each cannery and/or in each vessel a Co-Ordinating Committee which shall be set up by each organization delegating a member as Shop Steward and/or Union Delegate to sit on this Committee.

Marginal Notation—Same.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Section 13. (a) The parties hereto (excepting residents of Alaska) hereby waive the provisions of Chapter 45 of the Session Laws of the Territory of Alaska for the year 1925, and all amendments thereof, and acts supplemental thereto, and agree that the payment of wages and other compensations referred to in this agreement, shall be in accordance with the provisions of this agreement and without regard of said Act.

Marginal Notation—Same.

(b) The parties hereto waive the provisions of Section 124 of the Compiled Laws of Alaska, 1933, and agree that the payment of wages and other compensation referred to in this agreement shall be made promptly at the close of the period of employment and shall be accompanied with an itemized statement of each employee's earnings and deductions, provided, however, each resident employee hired under this agreement shall be entitled to at least one draw day each week when the same is requested by such employee.

Marginal Notation—Reworded.

(c) The Company shall pay directly to all employees all earnings due within forty-eight (48) hours after arrival in home port, holidays and Sundays excepted. Failure on the part of the Company to meet this requirement shall constitute a just claim by the employee to an additional pro-rata

Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

monthly or seasonal wage rate for each day of delay, plus subsistence at \$3.00 per day.

Marginal Notation—Same.

Section 14. School, Poll, Social Security and other taxes, assessed against employees, authorized by any Federal, State, or Territorial laws, shall be deducted by the Company from wages due. The Company shall withhold any payments required to do so by writ of garnishment or other legal proceedings or by assignments. Before acceptance the Company shall verify with the individual employee or employees.

Marginal Notation—Same.

Section 15. Allotments and Advances. (a) During the course of the season employees with families or dependents upon them shall receive the following allotments:

Foremen	\$ 75.00	per month
Chief Stewards	75.00	“ “
Cooks and Bakers.....	75.00	“ “
Other kitchen help	50.00	“ “
Cannery workers	50.00	“ “
Tallymen, etc.	50.00	“ “
Nurses, etc.	50.00	“ “

Marginal Notation—Prac. same.

(b) Allotments shall be made by assignments by the individual employees in accordance with Section 15 and shall be paid within seven (7) days after sailing to Alaska and every thirty (30) days thereafter.

Marginal Notation—Same.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(c) Employees shall be given an advance of five dollars (\$5.00) upon signing the payroll.

Marginal Notation—Same.

(d) It is agreed and provided that the sum of ten dollars (\$10.00) shall be made available to each employee one (1) day before arrival in the home port.

Marginal Notation—Same.

Section 16. Employees whose work is such that it has been the custom to necessitate the use of suitable oil-skins, apron, knee, hip or sea-boots, sleeve guards, or gloves, southwesters, kapok life jackets, flashlights, rubber overshoes, rubber gloves, oilskin hats, and heavy leather gloves furnished to lye-wash and retort men, shall be supplied free of charge.

Marginal Notation—Reworded.

Section 17. No employee shall be required to work where hazardous or unsafe conditions exist.

Section 18. (a) Transportation, subsistence, laundering, hospitalization, medical, surgical and dental attention shall be furnished to all employees from the point of embarkation to canneries and return to point of origin at the Company's expense. Residents of Alaska shall be transported from point of hiring and return at the Company's expense. Where men are transported on lighters, same shall be equipped with tarpaulins, toilets, and drinking water. The safety and comfort of employees shall be ob-

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

served above all, and shall be the first consideration.

Marginal Notation—Reworded.

(b) From vessels in anchorage in Alaska to canneries, and vice-versa, men shall be transported between the hours of 8:00 a.m. and 5:00 p.m. Any other hours of transporting men shall be paid at the overtime rate, as the case may be.

Marginal Notation—New.

(c) If a nurse is required to go to the ship or place away from the Company's office for the purpose of helping the Doctor with vaccinations, examinations, etc., the Company shall furnish said nurse with transportation and pay to and from the office or place of the Company.

Marginal Notation—New.

Section 19. Definition of Various Phases of Work. For the purpose of clarifying and eliminating misinterpretation or misapplication of the various phases of work in or around either floating or land plant canneries, it is agreed that the following definitions of work will be recognized:

(a) Routine Cannery Work. Includes all work performed as outlined in Section 1 (a). Refer to Jurisdiction, Section 4 (a).

Marginal Notation—Same.

(b) Stevedore Work. All work involving the handling of any kind of cargo, moving to a dock or to a vessel and/or floating structure from a point of rest on the dock or in the warehouse, or vice-

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

versa, including preparatory work, breaking piles, shall be considered stevedore work. It should be distinctly understood that cargo as referred to above, moved from dock to warehouse, and eventually moved again, whether handled one or more times, or vice-versa, shall be considered stevedore work and paid at the wage agreed herein.

Marginal Notation—Same.

(c) Experimental Work. Shall be construed to mean work in connection with research or other technological operation not covered under routine operation in the handling or processing of sea-foods, or its by-products. Refer to Section 4.

Marginal Notation—Clarified 4.

(d) Miscellaneous Work. Shall be all work other than those classified as routine, stevedore, or experimental work.

Marginal Notation—Same.

(e) Tallymen, etc. For the purposes of this agreement, when the words tallymen, etc., appear in this agreement, it shall mean tally captains, tallymen, cannery clerks and/or cannery storekeepers, cannery timekeepers, and miscellaneous clerical work that may be added.

(f) Nurses, etc. For the purpose of this agreement, where the words nurses, etc., appear in the agreement, it shall mean nurses, combination nurses and embalmers, first-aid men and orderlies.

Marginal Notation—New.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(g) Any time the word employee is used in this agreement it will mean either a resident or a non-resident member, or a permit person.

Section 20. Recreation, Radio, and Press News,

(a) The Company agrees to subscribe for and furnish a daily radio news service for employees in Alaska. Such radio news shall contain uncensored labor news items, and copies of same shall be posted daily at all canneries, bunkhouses, and in a conspicuous place aboard all ships, tugs, scows, etc., and in any location manned by members of any Union covered by a Contract with the Company.

Marginal Notation—Same.

(b) A recreation hall for the use of the employees shall be made available and shall contain a radio, and/or a suitable phonograph with up-to-date records of Spanish and English selections, and in sufficient numbers to be determined upon, and sufficient needles, also reading and writing tables, suitable number of benches and book-shelves.

Marginal Notation—Clarified.

Section 21. Medical and Hospital. (a) The Company shall furnish up-to-date hospitals, and/or first-aid stations, and dispensaries. Vessels and cannery plants shall be equipped with Stokes Stretchers, first-aid kits and such other equipment and supplies as are agreed upon and required.

Marginal Notation—Same.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(b) All physicians and surgeons employed by the Companies operating canneries in Alaska shall be required to hold a license to practice medicine from the State from which he embarks, and shall have been engaged in interne-ship, residency medicine, or the private practice of medicine within ninety (90) days prior to his employment by the Company.

Marginal Notation—Changed.

(c) Established headquarters shall be open twenty-four (24) hours each and every day, Sundays and Holidays included, with the Doctor subject to call. In the event dental or Doctor's attention is required, and cannot be furnished in a plant, transportation by air or otherwise shall be immediately provided. The Co-Ordinating Committee shall determine, if necessary, when transportation is required.

Marginal Notation—New.

(d) Doctors or others shall not be allowed to perform any work coming under the scope of nursing.

Marginal Notation—New.

(e) Nurses, first-aid men, embalmers, orderlies, etc., shall do no work outside the scope of nursing and the care of the sick and injured.

Marginal Notation—New.

(f) The hospital in plant or on the vessel shall be used for sick and injury cases only, and shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

not be used as a hotel, but in case of an emergency, the nurse shall be paid in addition to his regular salary the sum of \$1.00 per guest per day.

Marginal Notation—New.

(g) The Company shall furnish the nurse with a list of each and every member employed by the Company within twenty-four (24) hours after arrival in the Cannery, setting forth name, rank, Company number, etc.

Marginal Notation—New.

(h) Dental service shall consist of at least painless extractions and the treatment of infections resulting from said extractions.

Marginal Notation—Same.

(i) Before embarking, excepting residents of Alaska, all employees shall submit to a physical examination by a qualified physician, including those members requiring special certificates as food handlers, etc., and no costs in connection with the examination and certificates shall be borne by the Union or its members.

Marginal Notation—Same.

(j) Where employees are required to submit to a physical examination, same shall be done in a dignified manner, with regard to the method used, and the Union reserves the right to furnish doctors for the purpose of re-examination where physical rejection has been made. In such case, and in the

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)
event that member is eventually passed, Company shall be held responsible for the examination fee.

Marginal Notation—Same.

(k) In the event of a transfer of an employee patient physically unfit for further performance of his work and his condition is such that nursing care is necessary during his transfer, the Company shall furnish adequate nursing care until the patient arrives at his destination.

Marginal Notation—New.

(l) Any employee covered by this agreement who sustains an injury in the course of his employment and is thereby prevented from working shall receive his full wages during the period of such injury and until the end of the season and his discharge to port of embarkation. From and after the end of the season he is to receive compensation in accordance with the Workmen's Compensation laws for the Territory of Alaska, or the State from which he embarks, at his option, or in event injuries occur at sea while performing duties aboard any vessels he may seek redress under the act of Congress usually referred to as the Jones Act.

Marginal Notation—Clarification.

(m) Any employee, from the time of embarkation until his return, who is unable to perform his duties as a result of any illness manifesting itself between said periods, shall receive his full compensation for the season, and in event said injury is

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

industrial in nature, shall have redress under said Workmen's Compensation laws.

Marginal Notation—Clarification.

Section 22. (a) In the event of death of any member for any cause—accidental, natural, or industrial—while in the employ of the Company, all costs of transportation, embalming, and the furnishing of a metal casket for the transporting of remains shall be at the expense of the Company, and interment shall be at the direction of the Union, except that the Company shall not be responsible for additional costs of transportation to points other than that of original embarkation. In the event of a burial in Alaska, or at sea, interment shall be in keeping with the recognized standards. It is further provided, in the event of death of any member, accidental, natural, or industrial, while in the employ of the Company, that the deceased's beneficiary shall be paid the equivalent of a full season's compensation.

Marginal Notation—Reworded.

(b) When a member dies and a wire is sent the family through the Union for instruction as to disposal of body, and embalming is required pending receipt of information, same shall be done.

Marginal Notation—New.

Section 23. Fire Department. (a) Adequate fire stations and sufficient mobile fire equipment shall be provided by the Company at all canneries.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Two crews (day and night) consisting of no less than eight (8) men, shall be designated and instructed in the use of mobile equipment. Fire drills shall be held not less than twice monthly, on Company time, during the second period of any designated shift; the time to be set jointly by the Coordinating Committee and the Company Agent.

Marginal Notation—Same.

(b) A uniform standard code signal shall be established.

Marginal Notation—Clarified.

Section 24. Linen and Laundry. (a) The Company shall furnish all employees covered by this agreement with soap and matches, a bed, spring, mattress, pillow, and two (2) good blankets, pillow slips, two (2) white sheets, and spread; to be changed every seven (7) days; face and bath towels to be furnished twice a week; the day of change to be agreed upon between the Chief Steward and Delegate.

Marginal Notation—New.

(b) When linen change is not provided, the Delegate shall notify the Chief Steward to this effect, and if no change is made on the following day, a penalty of One Dollar (\$1.00) per day per employee will be charged.

Marginal Notation—Part new.

(c) The Company agrees to furnish at their ex-

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

pense to all employees covered by this agreement laundry service once a week of washing, drying, and ironing, of Nurses' and Culinary Workers' uniforms.

Marginal Notation—New.

Section 25. Sanitation. (a) Janitors in canneries and vessels shall be supplied by the Chief Steward with foot wash solution, lye, deodorants, toilet paper, mops and brooms, and face soap when required for employees.

Marginal Notation—Reworded.

(b) On vessels, floating canneries, or shore plants, janitors will only be required to take care of sleeping quarters, toilets, and showers used by the cannery crews.

Marginal Notation—Reworded.

(c) The Rules and Regulations of the Territorial Department of Health covering sanitation for canneries shall be strictly adhered to and observed.

Marginal Notation—Reworded.

(d) Upon arrival in Alaska and before leaving, employees shall be given one day to wash clothes and bathe.

Marginal Notation—New.

Section 26. Dormitories and Sleeping Quarters.

(a) The Company shall furnish suitable quarters, screen doors and tight windows, with heat, light, ventilation, running water, toilet and showers in

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)
connection, and necessary furniture, for all employees covered by this agreement.

(b) Tallymen, etc., shall not be required to sleep more than two (2) to a room.

Marginal Notation—New.

(c) Nurses, etc., shall have separate quarters, either in hospital, or adjacent, and have separate rooms.

Marginal Notation—New.

(d) Kitchen crews shall have sleeping quarters apart from kitchen and away from other quarters in order to assure restful sleep without disturbance, and not more than two (2) men shall be assigned to a room.

Marginal Notation—Reworded.

Section 27. Meals. (a) There shall be no distinction between hot or cold lunches or meals.

Marginal Notation—New.

(b) Meals shall be served at the following times, en route and in canneries: Breakfast at 7:00 a.m., lunch at 12:00 noon, and dinner at 5:00 p.m., and every five (5) hours thereafter from the commencement of said meals, except in cases of breakdown of ranges or other causes where the Company may not be at fault.

Marginal Notation—Same.?

If men are worked more than five (5) hours without a meal, they shall be paid a penalty of time

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

and one-half of the prevailing rate as the case may be.

Marginal Notation—Clarified.

(c) Sufficient food of a diversified character shall be furnished by the Company, and wholesome meals of good quality and sufficient quantity shall be available at all meals.

Marginal Notation—Same.

(d) All meals shall be served in American style and standard, but this does not preclude the use of foreign foods.

Marginal Notation—Same.

(e) All meals shall be served in crockery-ware, whether on vessels or in canneries, and satisfactory table-gear must be provided.

Marginal Notation—Same.

(f) While vessels are enroute, breakfast, lunch and dinner shall be served, and 9:00 p.m., coffee and cold cuts shall be served.

Marginal Notation—New.

(g) In canneries, ten (10) minutes shall be allowed for coffee and pastry at 10:00 a.m., 3:00 p.m., and 8:00 p.m.

Marginal Notation—New.

(h) Failure on the part of the Company for any cause whatsoever to furnish food in a sufficient quantity, including meat in enough quantities and

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

variety to provide two (2) different kinds of meat for noon and supper meals, shall subject the Company to a penalty of \$1.00 per member-per day until sufficient food is furnished.

Marginal Notation—New.

(i) While working or travelling enroute on vessels, transported on lighters or by train, bus, or other means, employees shall be fed with a hot meal every five (5) hours, and if not, the Companies shall pay a penalty of time and one-half of the prevailing rate, as the case may be.

Marginal Notation—New.

(j) The Company shall furnish the Union a list of food and provisions fifteen (15) days prior to sailing.

(k) No less than sixty (60) minutes shall be taken for any meals.

Marginal Notation—Reworded new.

(l) When employees are required to cook their own meals they shall be paid one dollar (\$1.00) per meal in addition to their regular compensation.

Marginal Notation—New.

Section 28. Hours. (a) Cannery Workers. Eight (8) hours or less between the hours of 8:00 a.m. and 5:00 p.m., shall constitute a day's work for the entire season from the time of leaving until return, for cannery workers.

Marginal Notation—Clarified.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(b) Forty-eight (48) hours, or less, shall constitute a week's work for cannery workers, between Monday and Saturday, and if the forty-eight (48) hours have not been worked, they shall not be required to make same up in any succeeding week.

(c) Kitchen Personnel. Eight (8) hours within a spread of twelve (12) hours between the hours of 6:00 a.m. and 6:00 p.m. shall constitute a day's work for all members of the kitchen crew on the day shift. Night men shall work a straight shift from 10:00 p.m. to 6:00 a.m.

Any work performed in excess of eight (8) hours, within the spread, or any work performed before 6:00 a.m. or after 6:00 p.m., or after 12:00 noon on Saturdays shall be paid for at the overtime rate.

Marginal Notation—Changed.

(d) Tallymen, etc. The working day before and after the fishing season shall be from 8:00 a.m. to 5:00 p.m. All work performed outside the period shall be considered overtime and paid at the overtime rate.

During the actual canning season, tallymen, etc., with the exception of watchmen, shall work at all times without overtime.

Marginal Notation—Same.

(e) Watchmen. Eight (8) hours shall constitute a day's work, from 8:00 a.m. to 4:00 p.m., from 4:00 p.m. to 12:00 midnight; from 12:00 midnight to 8:00 a.m.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Forty-eight (48) hours shall constitute a week's work, from Monday, 8:00 a.m. to Saturday 4:00 p.m. Sundays and Holidays shall be paid at the overtime rate for the three shifts.

Marginal Notation—Same.

(f) Nurses, etc. Nurses, first-aid men, orderlies, etc., shall work an eight (8) hour shift. First shift from 6:30 a.m. to 2:30 p.m. Second shift from 2:30 p.m. to 10:30 p.m. Third shift from 10:30 to 6:30 a.m.

Six (6) days, from Monday to Saturday, shall constitute a week's work. Sundays and Holidays shall be paid at the overtime rate for the three shifts.

Marginal Notation—New.

(g) Resident Hourly Workers. For hourly resident workers three (3) hours minimum shall be paid for each call to work whether work lasts that long or not. Resident employees, who upon reporting after being called to work are forced to stand-by for lack of material, breakdown, or any other reason for which they themselves are not responsible, shall be paid for such stand-by time at the prescribed hourly wage for each classification unless the Company declares a recess of at least four (4) hours.

Marginal Notation—New.

(h) When the cannery operates during the canning season, resident workers regularly employed and assigned to positions on the line at the be-

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

ginning of the season shall have the opportunity to work as many hours as the lines operate and resident workers regularly employed and assigned to positions with the warehouse crew shall have the opportunity to work as many hours as the warehouse will operate. In the event that all lines are not operated, workers regularly employed and assigned to positions on the lines shall be rotated on a line basis. The intent and purpose of this paragraph is to guarantee the resident workers all of the work available at the cannery in the position to which they have been assigned.

Marginal Notation—New.

(i) The hour of twelve midnight (12:00 m.) shall be the basis for the computation of the payroll. On days of arrival, embarkation, or signing Company payroll a full day shall be paid irrespective of exact time.

Marginal Notation—Same clarified.

(j) One nurse shall be employed at least fourteen (14) days before departure of the ship, whose duty shall be to take inventory and stock of medicine and supplies of the ship. He shall pass upon all medical and hospital supplies for the cannery and ship shall not be allowed to depart without the OK of said nurse and the Union.

Marginal Notation—New.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(k) Pay for all employees shall start from date of embarkation, or signing of Company's payroll.

Marginal Notation—Clarified.

Section 29. Wages. (a) The following rate of compensation shall apply to the respective classifications of employment.

Marginal Notation—New.

1. Cannery Workers.

(a) All cannery workers employed in canneries normally operating three months or less, shall receive a two months' guarantee of wages in the amount of \$300.00, in accordance with Section 30 (a) and (b), plus the additional compensation for the following employees as outlined below:

Marginal Notation—Clarified.

1. Delegates shall be paid \$60.00 per month.
2. Butchers, iron-chink men, hand-butchers, jitney-drivers, relief-men....\$50.00 per month
department heads, solderers, & slimers
3. Employees designated in Class "A"....\$40.00 per month

Marginal Notation—New.

(b) All cannery workers employed in canneries normally operating three (3) months or more shall receive a three (3) months' guarantee of wages in the amount of \$450.00, in accordance with Section 30 (a) and (b), plus the additional compensation for the following employees as outlined below:

Marginal Notation—Clarification.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

1. Delegates shall be paid \$60.00 per month.
 2. Butchers, iron-shink men, hand-butchers, jitney-drivers, relief-men, department heads, solderers and slimers\$50.00 per month
 3. Employees designated in Class "A" \$40.00 per month
- Marginal Notation—New.

(c) In the event the season is extended longer, the wages shall be paid on a daily pro-rata basis.

2. Resident Cannery Workers.

(a) Resident cannery workers hired at a monthly or seasonal rate shall work under the same classifications and receive the same rate of pay as specified for non-resident workers in Section 29 (a)-1 above above, with the following additions:

Marginal Notation—New.

(b) Where board and room is not furnished, \$30.00 per month shall be added.

(c) All resident monthly workers shall receive in addition to above rates the equivalent of transportation charges to Alaska and return paid for transporting non-resident workers to Alaska.

(d) Residents hired at an hourly rate shall receive the following minimum rates under this agreement:

1. Hand pewing (where no elevator is installed in boats).....\$1.05 per hour
2. Class "A"90 " "
3. Class "B"85 " "
4. Class "C"80 " "
5. Class "D"75 " "

Marginal Notation—New.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

3. Foremen

(a) The following shall be the wages paid to foremen per season. The season shall not exceed ninety (90) days, and if exceeded, shall be paid additional on a pro-rata basis.

	First Foreman	Second Foreman
1 and 2 lines.....	\$	
3 lines		
4 lines		
5 lines		
6 lines		
Top Foreman		

Marginal Notation—New.

4. Tallymen, Etc.

(a) Tallymen, etc., covered by this agreement shall be paid at the following rates:

Tallymen	\$210.00 per month
Timekeepers	210.00 “ “
Cannery Clerks	235.00 “ “
Tally Captains	235.00 “ “
Storekeepers	210.00 “ “
Watchmen	150.00 “ “

(b) Tallymen, etc., covered by this agreement, with the exception of watchmen, shall receive in addition to their monthly wages a percentage for each case of salmon canned at said cannery. The method of figuring percentage will be as follows:

At a 1-line cannery.....	\$10.00 per thousand cases
At a 2-line cannery.....	5.00 “ “ “
At a 3-line cannery.....	3.33 “ “ “
At a 4-line cannery.....	2.50 “ “ “
At a 5-line cannery.....	2.00 “ “ “

Marginal Notation—New.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(c) There shall be one tally-captain, a member of this Union, on every tally station, who is to be responsible for all tally work, regardless of whom it is done by, on said station.

(d) Each tally station shall have a minimum of two (2) tallymen and one (1) tally captain from the Union.

There shall be no more than one (1) man tallying on any station other than from this Union.

5. Nurses.

(a) The monthly rate of pay shall be as follows:

Nurses	\$210.00	per month
First-aid men	210.00	“ “
Orderlies	150.00	“ “

(b) Each nurse employed ashore before leaving shall be paid for an eight (8) hours day at the rate of \$1.50 per hour. Any time the nurse is called for shoreside work, he shall be paid for at least four (4) hours, whether work lasts that long or not.

(c) The Company agrees to pay the Nurse, or First-aid men the sum of \$20.00 for preparing a body for burial in Alaska, or at sea.

(d) In the event of a death of an employee and embalming is performed for burial in Alaska, \$20.00 additional shall be paid the embalmer, and if embalming is performed for transporttaion and shipment, \$50.00 additional shall be paid.

Marginal Notation—New.

(e) When nurses are required to care for any

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

patients not employees of the Company, the Company shall pay the nurse in addition to his regular salary the sum of four dollars (\$4.00) per patient for each eight (8) hours, and one dollar fifty cents (\$1.50) per hour overtime.

(f) For clinical patient not employed by the Company and treated by the nurse, the Company shall pay the nurse in addition to his regular salary, the sum of one dollar fifty cents (\$1.50) per visit for each patient treated by the nurse.

6. Culinary Department.

(a) Kitchen personnel covered by this agreement shall be paid at the following rates:

Chief Steward	\$200.00	per month
First Cook	180.00	“ “
Second Cook	160.00	“ “
1st Cook who bakes.....	190.00	“ “
2nd Cook who bakes.....	170.00	“ “
Night Cook	165.00	“ “
Butcher	160.00	“ “
First Baker	180.00	“ “
Second Baker	160.00	“ “
Waiters	110.00	“ “
Scullion or Pot Washers.....	115.00	“ “
Dish Washers	115.00	“ “
Provision Storekeepers	140.00	“ “
Combination Man		

Marginal Notation—Changed.

(b) Stand-by wages for all kitchen crew members shall be paid pro-rata at the daily pay of monthly wages, plus subsistence, if not furnished for eight (8) hours work from 8:00 a.m. to 5:00 p.m.,

Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

except Saturdays, in which case the day shall terminate at 12:00 noon. If men are required to work Saturday afternoons, or after 5:00 p.m., or Sundays and/or Holidays, they shall be paid at the regular overtime rate.

Marginal Notation—Clarification new.

Section 30. (a) The Company guarantees each employee, working at a monthly or seasonal rate of wages as indicated under Section 1, employed in the Alaska cannery operations covered by this agreement hired outside the Territory of Alaska not less than two (2) months' wages in accordance with position as per classification, unless employee should be discharged or quits, as herein provided, and not less than three months' guarantee as outlined above for those employed in canneries normally operating three (3) months or more.

Marginal Notation—Same ?

(b) In the event that the cannery is destroyed, or so greatly damaged from any cause or the laws, rules or regulations with reference to salmon fishing or canning be changed, or that in the Company's judgment, because of strikes or for any reason, it would be impossible or unprofitable to continue operations, the Company shall comply with guarantee, excepting that the Company shall return each employee covered by this agreement to the point where hired at its expense and pay him until such return, unless employee should elect to remain in Alaska,

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)
in which event his employment shall terminate at
the cannery.

Marginal Notation—New.

(c) Unless expedition or operation is abandoned
any man who has signed the Company's agreement
and has been accepted by the Company and is
discharged shall be paid in full compensation, said
compensation to be paid within forty-eight (48)
hours after such discharge.

Marginal Notation—Same changed.

(d) Company shall furnish statements of earnings
and deductions at least three (3) days before
arriving at port of embarkation.

Marginal Notation—Clarification.

Section 31. Overtime. (a) Cannery Workers
For cannery workers, except residents on an hourly
rate of wages, any work performed between 6:00
a.m. and 7:00 a.m., and from 6:00 p.m. to 10:00
p.m., shall be paid at the overtime rate of \$1.00
per hour over and above the monthly and seasonal
rate.

Marginal Notation—Up.

(b) The hours between 10:00 p.m., and 6:00 a.m.
shall be designated the rest period for cannery crews,
but if called to work shall be paid at the overtime
rate of \$1.50 per hour

(c) Residents. The overtime rate for Alaska
resident cannery workers working on an hourly

Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

ate of wage shall be paid at the rate of time and
ne-half.

Marginal Notation—New.

(d) Tallymen, etc. Overtime rate for tallymen,
ally-captains, etc., shall be \$1.50 per hour. Overtime
shall be paid for all work performed between Satur-
day 5:00 p.m., until Monday, 8:00 a.m., except dur-
ing actual fishing season. During actual fishing
season, men shall work at all times without over-
time.

Marginal Notation—New.

(e) Watchmen. Overtime shall be paid at the
rate of \$1.25 for all hours worked in excess of eight
(8) consecutive hours.

(f) Nurses, etc. The overtime rate of pay shall
be as follows:

Nurses	\$1.50 per hour
First-aid men	1.50 " "
Orderlies	1.25 " "

Marginal Notation—New.

(g) Kitchen personnel. The overtime rate for
kitchen personnel shall be \$1.15 per hour, over and
above the monthly or seasonal rate.

(h) Stevedore work. Stevedore work shall be
paid for at the arte of \$1.05 per hour between the
hours of 8:00 a.m. and 5:00 p.m., and \$1.50 per hour
after 5:00 p.m., and before 8:00 a.m.. in addition
to the monthly or seasonal wages.

(i) Experimental work. Experimental work

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)
shall be paid for at the rate of \$1.00 per hour between the hours of 8:00 a.m., and 5:00 p.m., and \$1.50 per hour after 5:00 p.m., and before 8:00 a.m., in addition to the monthly or seasonal wages.

(j) Miscellaneous work. Miscellaneous work shall be paid for at the rate of \$1.00 per hour between the hours of 8:00 a.m. and 5:00 p.m. and \$1.50 per hour after 5:00 p.m., and before 8:00 a.m. in addition to the monthly or seasonal wages.

(k) When actual overtime worked is less than one-half hour, one-half hour shall be paid. When overtime exceeds one hour, payment will be allowed on actual time worked, but not less than one-half hour.

(l) Daily overtime slips shall be given by the Company to each Delegate upon the completion of said overtime period.

Section 32. Holidays. (a) All Sundays and Holidays shall be paid for at the overtime rate.

(b) All Sundays, Memorial Day (May 30th), Independence Day (July 4th), Maritime Memorial Day, (July 5th); Labor Day, (1st Monday in September); Admission Day, (September 9th); and Saturday afternoon for culinary workers; and any other day that may be declared a Holiday by the Government of the United States, or by the State of California, State of Washington, State of Oregon, and Territory of Alaska, shall be declared Holidays.

Marginal Notation—Clarification?

(c) July 5th, if worked, shall be observed with at least a half-hour stoppage of work that a proper

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

observance may be held for Maritime Memorial Day. Such stoppage to take place from 2:00 p.m. to 2:30 p.m. The American flag shall be flown at half-mast from sunrise to sunset.

(d) When the Holiday falls on a regular rest day, the day immediately following shall be observed as a Holiday, and any work performed on that day shall be paid for at the overtime rate.

(e) Before, during, and after the actual canning season Sunday shall be the recognized day of rest each week for the entire cannery personnel covered by this agreement, in addition to all recognized Holidays, and all work performed on these days shall be paid at the applicable extra compensation rate agreed herein, excepting tallymen, etc., as otherwise provided, herein.

(f) The Union has designated June 24th as Alaska Memorial Day, to remind its members of the many who died in Alaska while working in the salmon canning industry. The Company shall supply all the necessary materials and tools and the Union all the necessary labor to repair, put in shape and recondition cemeteries.

Section 33. It is agreed by and between the Parties hereto that the Union may represent one, all, or any number of its members relating to any claim said member or members may have against the Company, arising out of any of the clauses of this contract, and that said Union may sue in its own name on behalf of its members, or one, any, or all thereof,

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)
in order to procure adjudications of any claims arising hereunder enuring to the benefit of its members, the said Companies hereby waiving any technical defense to the right of said Union to sue in its own name as herein provided.

Marginal Notation—Same.

Section 34. It is agreed and understood that the formula and principles in drawing up an industry-wide agreement is in order to eliminate discriminatory practices covering contractual relations between employees and employers. But in the event certain conditions contained herein are not applicable, it may become necessary to make certain additions, amendments, exceptions, etc., which may be mutually accomplished by either provisos, memoranda, which in all cases must be signed and indented by both parties, attached and made a part hereof.

Marginal Notation—Same.

Section 35. Any conditions or benefits or terms of employment which have hereto been enjoyed by the employees covered by this agreement shall continue in force as in years past and shall not be taken away with the signing of this agreement.

CONCLUSION

The provisions of this agreement shall be binding until February 1, 1941, and shall remain in effect for succeeding years, except as to Section to which specific amendments are proposed in writing by the

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Company or the Union on or before February 1, of any year, which proposed amendments shall then become the sole subject for negotiation between the Company and the Union, and when any amendment is agreed upon it shall become a part of this agreement, and continue in effect as though it was originally a part of this agreement, subject to amendment as aforesaid.

Marginal Notation—New.

UNITED CANNERY, AGRICULTURAL,
PACKING & ALLIED WORKERS OF
AMERICA LOCALS 5, 226, 7, 237

Company:

.....
.....
.....
.....

uopwa-34

Q. Mr. St. Sure, was this document the first offer of terms and conditions for the Cannery Workers to work for the 1940 season which was offered to you? A. Yes, sir.

Q. On the date that you testified to, March 27th?

A. Yes, sir.

Q. At this meeting would you state briefly what occurred?

A. May I see the exhibit, please? (Indicating) My recollection is that at the meeting on March 27th a comparison was made with the 1939 contract in

(Testimony of Paul St. Sure.)

an effort to ascertain what changes, if any, were proposed by the union. The contract had been modified in form and in the order of terms, and on that occasion and, I believe, on a further meeting on the 29th of March clause by clause comparisons were made, not by direct reading back and forth but by requesting information from the union committee. And at that time notations were made both in my handwriting and in Mr. Moore's handwriting on the margin indicating whether the union stated the clauses in their 1940 proposal were the same as the old contract or whether they were new proposals or modifications or classifications. Pencil notations on the margin are the result of those discussions on the occasion of the meeting the 27th of March and 29th of March.

Q. At this meeting were those various clauses discussed and merits and demerits discussed?

A. I believe questions were asked and reasons given why changes were proposed. And in the main, however, the principal portion of the time was spent in endeavoring to find out where changes were being requested, and the extent of the changes and why they were being requested.

Q. Up to this time had the question of wages been discussed?

A. It was involved in the proposal that the union presented. There had been prior to that time, and my recollection is it was repeated to the Committee on the 27th of March. But at the 1st meeting on the 7th of March with the Maritime Federation

(Testimony of Paul St. Sure.)

Committee the statement was made that one of the principle objectives of the negotiations from the operators point of view was to endeavor to secure certain reductions, particularly in connection with overtime payments and conditions which were burdensome from the point of view of pay. In other words, the operators might reduce the loss they had taken the previous year in order that they might be more in line with the Seattle operations of their competitors. I believe the same discussion was had in general terms [119] during the course of these preliminary meetings with the Cannery Workers representatives; and I believe, likewise, it was indicated from the demands presented that the contract presented by the Cannery Workers Union on the 27th of March, 1940, indicated they were expecting considerable increases over the 1939 scale.

Q. In other words, the provisions in the proposed 1940 offer were higher than the 1939 San Francisco Scale?

A. That is correct.

Q. And the statements that were made by you at that time and also had been made in previous times was in order to mitigate the loss which the Cannery Workers had suffered the previous year; so, consideration would have to be made to reducing the 1939 wage scale in San Francisco and to give proper consideration to it being placed down in the 1939 Seattle scale.

A. That is correct.

Q. Now, is it a fact that the San Francisco Can-

(Testimony of Paul St. Sure.)

ners are in direct competition with the Seattle Cannery operators?

A. They are. They sell the same product to the same market.

By Referee Roden:

Q. How does it happen there is this discrepancy between the Seattle Operators and the San Francisco Operators?

A. They may not be better negotiators than the operators in San Francisco, but the unions may be easier to get along with. The fact is, the wage scales are all the way from 1% to 16% below the San Francisco Scales based upon a comparison of the 1939 operations of the two concerns or two sets of concerns. There are also various jurisdictional differences which apparently enter into that picture, in this. Out of San Francisco certain unions claim jurisdiction over the work and demand higher rates of pay for that work than are claimed out of Seattle. For instance, the Marine Cooks and Stewards operate out of San Francisco but they do not claim jurisdiction, over similar work out of Seattle. The rates are higher out of San Francisco for the Marine Cooks and Stewards than they are for the Fishermen and Cannery Workers who do portions of that work out of Seattle, and other things like that in some situations. However, the same unions, noticeably the American Communications Associations, I believe, the Cannery Workers on some operations, and most of the maritime crafts have offered and contracted for lower terms for

(Testimony of Paul St. Sure.)

the same work out of Seattle that they have asked higher rates for out of San Francisco. [120]

By Mr. Madison:

Q. There was some discussion yesterday as to whether this difference in wage scale for the Cannery Workers, which admittedly prevailed between San Francisco and Seattle, which was admitted to prevail in Central Alaska, did not prevail or prevailed only in a very limited way in the Bristol Bay operators. Have you any information as to that?

A. My impression is I would have to check the accurate comparisons. I have them on the total operations only and not broken down union by union. But there were differences in practically every operation to the disadvantage of San Francisco. I believe there was one exception in connection with the certain portion of the work the Machinists Union performed; but in every other instance the disadvantage was on San Francisco's back. And rates for each operation out of Seattle, both from the point of view of rates and Manning Scales and operations which affect the total labor cost, the benefits were from the operator's point of view in favor of Seattle and against San Francisco.

By Mr. Resner:

Q. May I interrupt just a minute? I understand you to say that applied to all unions? Without breaking it down to any particular union?

A. As to A.L.A. Union I know it is true. As to each union, my impression is it applies to each union

(Testimony of Paul St. Sure.)

with the exception of certain provisions in the machinists contract.

By Mr. Madison:

Q. Now, do you know whether it applies to the Cannery Workers Union?

A. My impression is it is. I would have to verify it. Those studies have been made and were made for the purpose of negotiations and before the negotiations.

Q. When you say to the disadvantages of San Francisco you mean it is to the disadvantage of the San Francisco operators and to the advantage of the San Francisco unions?

A. Yes. By that I mean under the contracts both generally and in every instance except one I mentioned, which, I believe, is the machinists contract, that the operating costs insofar as labor is concerned are higher in San Francisco for the same work than they are in Seattle or out of Seattle.

Q. Now, on April 1st the union wrote to its Alaska Salmon Industry announcing it was withdrawing from negotiations in San Francisco?

A. That is correct.

Mr. Madison: The letter will speak for itself. (Indicating) [121]

Mr. Resner: This is the letter where they say negotiations have been transferred to Seattle?

Mr. Madison: Yes.

I offer that in evidence and ask it be marked as Exhibit H.

(Testimony of Paul St. Sure.)

(Received in evidence as Exhibit H of Respondents.)

RESPONDENT'S EXHIBIT H

Alaska Cannery Workers Union
Local No. 5, C.I.O.

Affiliated to

United Cannery, Agricultural Packing & Allied
Workers of America

Committee for Industrial Organization, Maritime
Federation of the Pacific, San Francisco District
Industrial Union Council

International Labor Defense of the United States
George Woolf, President

Karl G. Yoneda, Vice-President

Raymond Aguirre, Secretary

32 Clay Street

San Francisco

Phone EXbrook 4871

April 1, 1940

Registered

Return Receipt Requested

Alaska Salmon Industry, Inc.

230 California Street

San Francisco, California

Att'n: Mr. Paul St. Sure

Gentlemen:

We hereby notify you that we are withdrawing from negotiation of the Proposed 1940 Agreement submitted to you, but request immediate meetings

(Testimony of Paul St. Sure.)

with you on the matter of cannery improvements, provisions, and personnel.

All provisions of the agreement will be negotiated in Seattle, where Representatives of this Local are meeting with the Industry.

If you are not represented in Seattle, we feel that you should make arrangements to have your Representative sit with the Industry's negotiators.

Respectfully yours,

[Seal]

SAM YOUNG

Secretary

ALASKA CANNERY WORK-
UNION #5

RD

uopwa-34

East More Canned Salmon - - Packed Under
Union Conditions
(Union Label)55

Q. Now, in this period we have been discussing prior to April 3rd have you had meetings with the various unions?

A. From the 8th of March until the 19th of March there were no negotiations and no meetings with any of the unions affiliated with the Maritime Federation of the Pacific. On the 19th of March we had our first meeting with the Fishermens Union. During the period from the 8th to the 19th each of these unions consistently took the position they

(Testimony of Paul St. Sure.)

would not bargain or discuss any 1940 contracts until their claims for the 1939 season had been adjusted to their satisfaction. The Fishermens Union met with us on that day to discuss, as they said, matters in connection with the physical equipment, that is, the matter of quarters and other conditions in Alaska as distinguished from a matter of wage agreements or agreements on the price of fish for Central Alaska. I believe there were other meetings established, which are detailed in a letter of April 3rd which I addressed to the unions and concerned the meeting of Marine Engineers on the 21st of March and the meeting of the Cannery Workers on the 27th, which I have described. The only other meeting in the interim being the meeting on the 22nd with the Cooks and Stewards.

Q. On April 3rd did you address a letter to the unions stating something would have to be done in order to permit the cannery to make their plans and buy their supplies, and so forth?

A. That is correct. The negotiations were divided by circumstances into two portions, attempted to be divided; the first portion relating to the Central Alaska operations at Chignik and Karluk for the reason they were earlier in time from the point of view of preparations.

Q. By that you mean the sailing date is prior to that expedition than to Bristol Bay?

A. That is correct. On the 3rd of April, I might state, up to this time there had been no preparation made, no complete preparations made, for the sail-

(Testimony of Paul St. Sure.)

ing to Central Alaska by the Alaska Packers Association, which was only the one of the three concerns involved in the operations at Karluk and Chignik. And they were concerned because of the necessity of completing the purchase of [122] supplies and getting the ships in order to go in order to avoid the necessity of having to meet at the last minute, as in previous years they had been required to do, increased union demands in order to prevent a tieup of their operations after they had purchased supplies and were ready to sail. Because of the fact we had made no progress up to that date of any consequence in negotiations—that is, up to the 3rd of April—and because it was necessary to begin to complete preparations for sailing, this letter was addressed to the unions, all of the unions, outlining specifically the position of the three packers and particularly the Alaska Packers Association in connection with the seasons operations specifying dates for sailing and a schedule for operations both for Central Alaska and Bristol Bay, the reasons therefore, that is for establishing those dates, and outline of the meetings, correspondence, and negotiations that had been held up to that point. In addition, they informed the union of the dates before which agreements would have to be reached if operations were to be undertaken to Central Alaska; and, also, containing a specific statement of proposals made by the operators to each of the unions concerned with the negotiations, even though some of the unions had never to that time presented any demands to us or

(Testimony of Paul St. Sure.)

even agreed to meet with us. And the letter of April 3rd contains an outline of the specific offer made by the Alaska Packers Association to each of the unions which had uniformly been employed on the job during 1939 season requesting that they act upon those proposals or give us information concerning them before the date specified in the letter of April 3rd.

Q. Do I understand you to say some of these unions had never met with you up to that time?

A. That is correct.

Q. And never made any proposals whatsoever? Notwithstanding they have or had been invited to meet with you, as the testimony has already shown?

A. That is correct.

Mr. Madison: (Indicating)

Mr. Resner: This is in evidence.

Mr. Madison: You put it in for a certain purpose, just limited the introduction of it to a certain paragraph, as I recall. I am offering the entire letter at this time.

I would like to offer this letter in evidence and have it marked Exhibit I.

(Received in evidence as Respondent's Exhibit I.) [123]

RESPONDENT'S EXHIBIT I

(Copy)

April 3, 1940

To The Unions Concerned:

We are advised by Alaska Packers Association that if that Company is to operate at Karluk and

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

Chignik during the 1940 season, the S.S. Chirikoff must sail from San Francisco not later than April 17, 1940. Since it is necessary to prepare and make purchases for this expedition, if it is to be undertaken, all arrangements for employment for Central Alaska must be consummated on or before April 10, 1940.

If agreements for employment are not completed by that time, it will be impossible to attempt to operate at Karluk, and that operation will not be undertaken.

We are advised further by Alaska Packers Association that if there is no operation at Karluk, but an expedition is outfitted for Chignik only, the sailing date for the S.S. Chirikoff can be postponed to April 21, 1940, and the final date for making preparation to April 12, 1940.

Each of these dates represents the latest possible time that can be set, and no leeway is allowed for unfavorable factors of weather, break down, etc. The sailing schedule has been figured as follows:

Begin outfitting for Karluk and Chignik.....	April 10
Sail from San Francisco.....	April 17
Due Karluk	April 24
Due Chignik	April 25
Due Karluk again.....	May 2
Leave Karluk	May 7
Arrive San Francisco.....	May 14

This schedule, of necessity, will have to be maintained if an operation at Bristol Bay is to be attempt-

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

ed for 1940. This statement is based on the following schedule:

Sail from San Francisco.....	May 22
Due Karluk	May 29
Due Chignik	May 30
Due Bristol Bay.....	June 2

We are authorized to submit this information to you upon the basis that if the final dates indicated for preparing the respective expeditions are allowed to pass without complete agreements as to working contracts with all unions concerned, such expeditions cannot and will not be undertaken. The experience of past years has proven that unless a clear declaration of intention is announced by operators and unions alike, last minute demands, negotiated under penalty of great losses to the operators necessarily resulting from delayed expeditions, have placed an unfair burden on attempted operations. It is essential that we avoid a repetition of this procedure in 1940.

Because certain delays have been experienced already, we believe it is proper to outline the progress of negotiations to date.

Prior to March 1, 1940, all unions having contractual relations with salmon cannerys operating out of San Francisco, were advised of the termination of the 1939 agreements and of the necessity of negotiating new agreements for the 1940 season.

On March 4, 1940, offices were established in San Francisco by Alaska Salmon Industry, Inc., and on

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

March 8, 1940 a letter was addressed to each union signed by the San Francisco operators, certifying that Alaska Salmon Industry, Inc., was authorized to represent these operators in all negotiations for the 1940 season, but without representation that there would or would not be operation. This letter of authorization was prepared at the request of the unions affiliated with the Maritime Federation of the Pacific.

On March 6, 1940, these unions advised the office of Alaska Salmon Industry, Inc., that no negotiations would be undertaken without such authorization, and that even if such authorization existed, no negotiations would be undertaken by any union of that group until all prior claims of all unions of the group were settled to the satisfaction of the unions concerned.

In reply to this declaration, Alaska Salmon Industry, Inc., advised each union affiliated with the Maritime Federation of the Pacific as follows on March 6, 1940.

“Enclosed herewith is a statement from Alaska Packers Association Alaska Salmon Co; and Red Salmon Canning Company, indicating the extent to which Alaska Salmon Industry, Inc., is authorized to deal with you on their behalf. Your attention is drawn to the fact that such authority is strictly limited to negotiations regarding a contract for the 1940 season only, without any representation whatsoever that any of these cannerys will or will not operate

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

in Alaska this season, and that such negotiations can be directed only to matters immediately involving a possible 1940 contract without reference to any unadjusted matters arising out of previous collective bargaining agreements.

“Should you desire to present any claims arising out of operations for 1939 or prior years, you are requested to take them up directly with Mr. Flea-ger of Alaska Salmon Company, Mr. Peterson of Red Salmon Canning Company, or Mr. Everett Matthews of the firm of Pillsbury, Madison and Sutro, on behalf of Alaska Packers Association, as the case may be. These gentlemen are already well acquainted with problems which have arisen under the previous contracts, and inasmuch as they have already had under consideration a number of these claims, it is the decision of these companies that they should follow such disputed matters through their final settlement.

“This office, on the other hand, has had no experience either with the previous contracts in general, or with the specific disputes which have arisen under them. We are prepared only to consider possible arrangements for the coming season. Will you therefore, please present any such claims immediately to the parties above named for further discussion.

“Since the companies individually are ready to meet with you concerning all prior claims, we believe it is obvious that all unsettled matters for previous seasons can be adjusted through proper legal channels without depriving either party of a

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

full and fair determination. Since this right of adjustment exists, and since the time factor is so vital to all parties concerned, we trust that you will not continue to take the position heretofore declared by you to the effect that the final settlement of all these separate claims in a manner satisfactory to you is a condition precedent to any 1940 negotiations. Such a position might jeopardize all possibility of operation, for it would require one party or the other to forfeiture of a right to a full hearing under threat of a refusal to bargain.

“Consequently, we will appreciate your advising us in writing at your earliest convenience concerning the position which your group proposes to take in the light of this communication.”

From March 8th, until March 19th, no negotiations were conducted with any of the unions affiliated with the Maritime Federation of the Pacific because of their refusal to meet, but on March 19, 1940, the Alaska Fishermen's Union presented to the Alaska Salmon Industry, Inc., a series of demands for changes in physical equipment in Alaska, together with certain contract changes. This union stated that specific replies concerning the requested physical changes would be required before any further negotiations would be carried on. Since that time, two further meetings have been had with the Fishermen's Union to discuss all matters presented by its representatives.

On March 21st, the Marine Engineers Beneficial

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

Association made an appointment for a meeting, but failed to appear, and despite our request for another appointment, none has been made.

On March 27th, meetings were had with representatives of the Marine Cooks and Stewards and with the Alaska Cannery Workers at which preliminary demands for contract revisions were presented. Further meetings to negotiate these demands were held on March 29th. We are now advised by the Alaska Cannery Workers Union, by letter dated April 2nd, that they are withdrawing from negotiations in San Francisco and will negotiate all agreements at Seattle.

Also, on March 29th, the representatives of the American Communications Association met with us for the first time and presented a proposal for a tentative agreement, and on April 2nd, the Marine Firemen presented their demands.

Negotiation meetings and conferences have been held with the Masters, Mates and Pilots, the Sailors Union of the Pacific, the Carpenters Union and the Blacksmiths Union. To date the two Machinists Unions have declined to meet for purposes of negotiation.

On the basis of this record and because of the pressure of time heretofore indicated, we deem it necessary to state in detail the proposals and counter proposals of the operators covering the work claimed by each union, with the understanding that unless existing differences can be adjusted or nego-

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

tiated before the dates hereinabove mentioned, the respective operations cannot be undertaken, despite our willingness and desire to operate if fair conditions are established.

In general, each union thus far contacted has been advised by the operators representatives that operating costs under union contracts have mounted to such an extent that no further increases can be granted, and further, that certain conditions, particularly those involving overtime claims of certain unions, must be corrected if the industry is to be enabled to continue in business. Upon this general premise, the operators hereby propose working agreements and conditions which they submit to be fair. Wherever changes from 1939 agreements are offered, the reasons for such changes are set forth in detail.

In making the following proposals and counter proposals, the operators desire to emphasize that they are in all instances equal to or in excess of conditions already established and approved by the unions concerned in their dealings with other industries and in dealings with competing operators in the same and allied industries. The salmon canners do not believe that they should be required to make further concessions which will cause their operations to be actually and competitively impossible without continuing heavy losses.

The specific proposals hereinafter listed are intended to cover possible operations in Central Alas

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

ka only, and are not intended to apply to Bristol Bay. The possibility of operation at Bristol Bay will depend upon negotiation of working agreements of a mutually satisfactory nature, and it is hoped that immediate discussions will be undertaken by the unions concerned.

Although the time factor, and the refusal of certain unions above listed to negotiate at all, will make it difficult to discuss in detail all matter of difference resulting from the proposals and counter proposals made herein. Alaska Salmon Industry, Inc., is ready and willing to meet immediately with any or all union representatives to attempt to negotiate all matters requiring clarification before the beginning dates specified. The canners desire to operate in 1940 if the unions will agree to conditions making such operations possible.

Herewith are the proposals and counter proposals of the operators:

1. Alaska Cannery Workers Union: The agreement for operations out of San Francisco will be negotiated on a uniform basis at Seattle, with provisions to apply to all operations undertaken from California, Oregon and Washington. The San Francisco operators have authorized Alaska Salmon Industry, Inc, at Seattle, to represent them in those negotiations which are now in progress. In the event that satisfactory agreements are reached for Central Alaska and those operations are undertaken, or in the event that Bristol Bay operations

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

are undertaken on an agreed basis, cannery workers will leave on the May 22nd, expedition. Any employment, is of course, contingent upon operation.

2. Alaska Fishermen's Union: For Central Alaska operations, the 1939 agreement will be renewed, provided that modifications heretofore negotiated shall be reduced to writing and included in the agreement, and provided further that the provision for penalty of \$75.00 if the expedition does not leave after men are signed on be eliminated. It is understood further that the floating equipment at Chignook Lagoon Cannery shall be handled, both on and off the ways, without payment of overtime.

3. American Communications Association: For Central Alaska expedition to Karluk and Chignik the 1939 agreement and modification covering use of radio phones will be renewed with the exception that penalty overtime for copying press, making extra carbon copies or other work that is performed during regular, straight time schedule be eliminated. Overtime rates shall apply to work performed outside of straight time hours only.

4. Brotherhood of Blacksmiths: For Central Alaska operations, the 1939 agreement will be renewed.

5. Brotherhood of Carpenters: For Central Alaska operations, the 1939 contract will be renewed.

Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

6. International Association of Machinists: For Central Alaska operations, the 1939 agreement, including provision for extension of the length of the season, will be renewed.

7. Marine Cooks and Stewards: For Central Alaska operations, the 1939 agreement will be renewed, on the basis hereinafter set forth, provided however, that any sections or conditions in conflict herewith are modified to conform with the following: Employees shall prepare, serve and clean up after three meals per day, and prepare, serve and clean up after coffee as customary during the day at straight time. In lieu of overtime for this work, each employee actually engaged in such service, shall be paid the sum of \$200.00 for the season, in addition to straight time pay, or if a full season is not worked, a pro-rata portion of such sum.

Three hours overtime at \$1.00 per hour will be paid to those actually engaged in preparing, serving and cleaning up after hot night meals, and one and one half hours overtime for those actually engaged in preparing, serving and cleaning up after night cold lunches or coffee or both.

Saturday afternoon, Sunday and holiday work will be paid for at double the regular straight time wage.

On Coastal voyages, the 1939 wage will be paid, provided other conditions are governed by the terms of the existing contract between this union

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

and the Shipowners Association covering coastal operations.

8. Marine Engineers Beneficial Association: For Central Alaska operations, the 1939 agreement will be renewed, provided that the same provision as that contained in the Masters Mates and Pilots 1939 agreement governing employment and reemployment in case of no operation is included.

9. Marine Firemen, Oilers, Watertenders and Wipers: For Central Alaska, the 1939 agreement will be renewed with the exception that the requirement that employment be guaranteed for fifteen men when ships are tied up be eliminated.

10. Masters Mates and Pilots: For Central Alaska operations, the 1939 agreement will be renewed.

11. Sailors Union of the Pacific: For Central Alaska operations, the 1939 agreement will be renewed provided that there be no extension of jurisdictional claims that will require employment of more workers, that fishermen be allowed to work barge as was customary prior to 1939, and that no more sailors be employed than actual operations require.

Radio press service will be made available to those crafts which received it during 1939, provided that in no case will the operators be obligated to supply it, if to do so would involve payment of overtime to any other craft. It should be generally understood that where changes herein

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

proposed affecting one union will likewise affect others, such as the above modification relating to press, appropriate changes must be made in other contracts to make them conform. Further, as previously stated, matters of clarification are subject to further negotiations as time permits.

In connection with demands heretofore made for changes in physical equipment, written replies will be submitted by the operators immediately and meetings to discuss these matters will be arranged if desired.

May we have your immediate reply to this communication.

Yours truly

ALASKA SALMON INDUS-
TRY, INC.

J. PAUL ST. SURE

JPS/CH

Mr. Examiner, it is quite often done in trials to read important parts of letters. That letter, to my mind, is an extremely important part of the negotiations and while I am sure you don't want me to burden the record by reading it all I would like to call your attention to the important nature of that letter so you will have the opportunity—I say I would like to point your attention to the entire letter because it is an important letter in the negotiations.

(Testimony of Paul St. Sure.)

Referee Roden: All Right.

A. I would like to make this comment, if I may, in view of the testimony given by other witnesses. That related primarily, I think, to Bristol Bay; in particular in connection with the statement if we had been able to reach an agreement with the Fishermen the entire operations would have been undertaken by the unions. In the main, the proposal for the Chignik and Karluk operations was an offer to renew 1939 conditions including fishermen's conditions with slight exceptions only. The principle point of difference in those negotiations in regard to agreement was with the Marine Cooks and Stewards Union, in which their negotiations took the position certain over time, amounted to as much as 150% to 200% overtime, in base pay had to be corrected. In addition there were certain unions had not even communicated with us to discuss 1940 operations. But the generalizations testified to previous with relation to what may have been the situation on the 3rd of May and occurring subsequently did not apply in any respect to the conditions as of the 3rd of April or as of the 10th of April, which relates to the Central Alaska operations.

Q. In connection with this Central Alaska operation, it is true, is it not, that the Central Alaska operation affected only the Alaska Packers Association, to the exclusion of the Red Salmon Canning Company and the Alaska Salmon Company?

A. That is correct.

(Testimony of Paul St. Sure.)

Q. The Alaska Salmon Company and Red Salmon Company—their canneries are in the Bristol Bay area?

A. That is correct.

Q. And Alaska Packers Association have canneries, likewise, in the Bristol Bay area?

A. They have them both in Central Alaska and Bristol Bay.

Q. Now what occurred next after this letter of April 3rd was sent to the Union?

A. On either before or immediately after that letter and in response to the notice that we received on the 1st of April from the Cannery Workers Union they were withdrawing from nego- [124] tiations in San Francisco I communicated with our Seattle Office and with Mr. Van Hoevenberg and he advised me Seattle would undertake to negotiate the Cannery Workers contract through the Seattle Office upon the understanding, to which we agreed, that the negotiations would be for a uniform contract to cover operations involving each of the three local unions concerned; and, likewise, be uniform insofar as operations were concerned from the companies' point of view both out of San Francisco, Portland, and Seattle.

Q. Mr. Van Hoevenberg is what relation to this picture?

A. He is the manager of, an employe of, the Alaska Salmon Industry, Incorporated, and in charge of the Seattle Office.

Q. And, so far as you know, he occupied the position of Negotiator in Seattle?

(Testimony of Paul St. Sure.)

A. That is correct.

By Referee Roden:

Q. Is he with Mr. Ellsworth up there? Isn't Ellsworth up there somewhere?

A. I should know the name. I should know if Mr. Ellsworth is connected with the office up there or not? My dealings have been connected with Mr. Van Hoevenberg.

(Remarks were made off the record.)

Mr. Madison: Mr. Ellsworth is the Secretary.

By Mr. Madison:

Q. Well, do you know, Mr. St. Sure, if Mr. Van Hoevenberg carried out the negotiations in Seattle was a result of which agreements were reached for Seattle operations?

A. I understand. I was informed by Mr. Hoevenberg agreement was reached on the basis for the negotiations by both the union and the Alaska Salmon Industry. By the union I mean the Alaska Cannery Workers. The Locals and Alaska Salmon Industry agreed there would be negotiations conducted for the purpose of securing a uniform contract for all operations, both San Francisco, Portland, and Seattle, in the Alaska Salmon Industry for 1940. I had reports from time to time from him concerning the progress of those negotiations and they then relate back to our situation here afterwards; but, insofar as the negotiations up to the time of the abandonment of the Central Alaska operations were concerned, there had been on agree-

(Testimony of Paul St. Sure.)

ments reached at Seattle with the Alaska Cannery Workers Union.

Q. Well, I am digressing now as to the point of time. I am just asking you generally if you know as a result of these negotiations in Seattle whether agreements with the various unions were reached and an expedition did leave Seattle and is now operating the canneries [125] in Alaska? Not the canneries of these San Francisco operators, of course, but the canneries of the Seattle operators?

A. That is correct. An agreement was reached. And even prior to the reaching of agreement there we understood that the Alaska Cannery Workers Union under a memoranda of various kinds permitted members of those unions to leave for the various operations in Alaska subject to an agreement still to be negotiated. A final agreement was reached, however, late in May, I believe, whereby a contract was signed or executed covering operations in the northwest or out of the Northwest to Alaska, but specifically stating that contract was executed upon the representation and understanding there would be no operations out of San Francisco. If there were to be operations out of San Francisco this season that the contract for San Francisco would have to be separately negotiated.

Q. It has been assigned, Mr. St. Sure, as an indication of bad faith the fact you were chosen to conduct negotiations here in San Francisco without any prior experience in canning salmon. Do you

(Testimony of Paul St. Sure.)

know what Mr. Van Hoevenberg's prior experience in canning salmon was, if any?

A. I believe he had no experience any more than I did in connection with the canning of salmon. He had had considerable experience in connection with handling labor negotiations.

Q. His former occupation was as assistant to Mr. Reed, with the Association of San Francisco Distributors, was it not, here in San Francisco?

A. That is correct.

Q. And their operations are local warehousing operations, having to do with the distribution of goods to retail stores in San Francisco Bay area?

A. That is correct.

Referee Roden: It is after twelve. Do you Gentlemen wish to adjourn now?

. . . At 12:05 p.m. the hearing was adjourned to reconvene at 2:00 P. M. [126]

Tuesday Afternoon Session

At 2:00 p. m. the hearing was reconvened by Referee Roden.

Referee Roden: Proceed.

MR. PAUL ST. SURE,
resumed and testified as follows:

Direct Examination

By Mr. Madison:

Q. Mr. St. Sure, at the end of the morning session you had just finished discussing the letter of

(Testimony of Paul St. Sure.)

April 3rd by the Alaska Salmon Industry, being sent to all the unions with which it was negotiating. What occurred thereafter?

A. I believe following that we had one or two meetings with the Alaska Cannery Workers Union at which Manning Scales and matters of the condition of porters and so forth were discussed. I believe one meeting was held on the 5th of April and another meeting was held on the 8th of April. And then on the 8th of April we received a letter from Mr. Cayton addressed to the Alaska Salmon Industry informing us all of the proposals which had been made in the letter of the 3rd of April which we had sent to the various unions had been rejected or were unacceptable to the organizations affiliated with the District Council No. 2 of the Maritime Federation of the Pacific and, likewise, informing us that all organizations except one—that was the machinists—were ready and willing to negotiate on the basis of the agreements they had originally presented and containing other statements about the necessity of time and getting back to negotiations and complaining about the manner of negotiations; and containing, also, some new requests for not signing on of certain doctors who had previously been employed.

Mr. Resner: We have already put this letter in.

Mr. Madison: I would like this marked Exhibit

J. I offer that in evidence.

(Received in evidence as Respondent's Exhibit J.)

(Testimony of Paul St. Sure.)

A. Now, the same afternoon following the receipt of that letter I sent a telegram to each of the unions listed on this copy of telegram in response to the letter stating that in view of the rejection of the proposals by all of the unions and in view of the machinists' continued unwillingness to bargain and the Maritime Federation group's position that none would sign unless all signed that it was difficult to know what purpose would be served by resuming negotiations. But we were ready and willing to meet—giving the telephone number and time, and [127] so forth—for arranging any meetings they might desire. That telegram was sent to each of the unions listed on the copy which I have handed you. (Indicating.)

By Mr. Madison:

Q. Which machinists union do you refer? I understand there were two interested, both of whom made agreements in 1939 and sent men in 1939.

A. I think each took the same position. The letter, however, of the 8th referred merely to the machinists union, without specifying which of the two locals or lodges were concerned.

Q. One was the East Bay Lodge, Machinists Union? A. Correct.

Q. And the other was the International Union, Machinists Local No. 68? A. That is right.

Q. State, if you know, whether either or both of these unions are members of the Maritime Federation? A. I believe they are.

Mr. Madison: Is there any question about that?

(Testimony of Paul St. Sure.)

Mr. Resner: No. We will stipulate they are both affiliated with the Union Council. That is, where there are workers working for the Maritime Industry, you see. They have other persons not employed in the Maritime Industry.

Mr. Madison: Is it correct to say they are affiliated only for the purpose of this salmon operation?

Mr. Resner: In this particular hearing, yes.

Mr. Madison: I offer in evidence as Exhibit No. K this telegram.

(Received in evidence as Respondent's Exhibit K.)

RESPONDENT'S EXHIBIT K

(Copy)

Western Union

San Francisco, April 8, 1940.

Responding to letter of Bay Area District Council No. 2 Maritime Federation of Pacific delivered to Alaska Salmon Industry, Inc., at one o'clock this afternoon please be advised our proposals of April 3 remain open but are contingent upon acceptance on or before April 10. In view of rejection of these proposals by all organizations affiliated with the Council and in view of continuing refusal of Machinists to meet at all, together with your statement that tentative agreements must be reached with all Council Unions before any agreements will be signed, we fail to understand purpose to be served in resuming discussions of your original demands. However, should you desire to meet with our repre-

(Testimony of Paul St. Sure.)

sentatives for this or any other purpose during the next 48 hours you may make appointment by telephoning Yukon 0452 in San Francisco before 6 p. m. today or any time tomorrow. A further reply to your letttr will be delivered by messenger or by mail.

ALASKA SALMON INDUS-
TRY, INC.

BY J. PAUL ST. SURE

(The foregoing telegram was sent to each of the following)

1. Revels Cayton, Secretary
Bay Area District Council #2
Maritime Federation of the Pacific
593 Market Street, San Francisco, Calif.
2. Alaska Cannery Workers Union
52 Clay Street, San Francisco, Calif.
3. Alaska Fishermen's Union
49 Clay Street, San Francisco, Calif.
4. Marine Cooks & Stewards
86 Commercial Street, San Francisco, Calif.
5. Marine Engineers' Beneficial Association
Room B, Ferry Building, San Francisco, Calif.
6. Marine Firemen, Oilers, Watertenders & Wipers
58 Commercial Street, San Francisco, Calif.
7. International Association of Machinists Local 68
Labor Temple
16th and Capp Streets, San Francisco, Calif.

(Testimony of Paul St. Sure.)

8. East Bay Lodge, Machinists Union
560 Eleventh Street, Oakland, Calif.

Q. Mr. St. Sure, after you sent the telegram did you also send a reply to the letter of the Maritime Federation unions?

A. Yes. Under date of April 9th a letter was addressed to the unions affiliated with District Council No. 2, American Federation of the Pacific, which was specifically in reply to the letter of April 8th received from Mr. Cayton, which refers to the telegram I have just identified.

Mr. Madison: I will offer in evidence this letter from the Alaska Salmon Industry, Inc., dated April 9, 1940.

(Received in evidence as Respondent's Exhibit L.)

RESPONDENT'S EXHIBIT L

Alaska Salmon Industry, Inc.
230 California Street San Francisco, California
Telephone YUkon 0452

April 9, 1940.

To The Unions Affiliated with Bay Area District Council #2, Maritime Federation of the Pacific:

On April 3rd we wrote to each of the San Francisco Bay Area unions concerned with the operations of salmon canneries in Central Alaska and Bristol Bay outlining the wage and working conditions under which 1940 expeditions of San Fran-

(Testimony of Paul St. Sure.)

cisco operators would be undertaken. In that letter we stated the final dates for preparing and sailing, and declared that April 10th is the last possible date for outfitting for Karluk. To avoid last minute misunderstandings and delays, we submitted counter proposals to each union which had presented demands, and made proposals to each union which had refused to negotiate with us.

We stated further: "We are authorized to submit this information to you (relative to sailing schedules) upon the basis that if the final dates indicated for preparing the respective expeditions are allowed to pass without complete agreements as to working contracts with all unions concerned, such expeditions cannot and will not be undertaken." This declaration is unambiguous.

In addition, our letter advised you that the practices of previous years, which caused the postponement of union agreements until the final date for sailing and thus allowed "last minute demands, negotiated under penalty of great losses to the operators, necessarily resulting from delayed expeditions" and placed "unfair pressures on attempted expeditions" could be avoided only by a full declaration of intention by operators and unions alike. Consequently, the operators made such a declaration, and have informed you that they are able no longer to submit to unreasonable demands under renewed economic coercion.

Such coercion in the past has produced losses that cannot be suffered. Abuses in "overtime"

(Testimony of Paul St. Sure.)

ates, so-called "clarifications of conditions", and "penalty clauses", when added to basic wages higher than those paid by competitive and allied industries, have multiplied labor costs to an extent that simple mathematics compel a revaluation of our labor agreements to remove such unfair burdens.

Because of this situation, our letter of April 3rd was submitted to you on the following premise:

"In making our proposals and counter proposals, the operators desire to emphasize that they are in all instances equal to or in excess of conditions already established and approved by the unions concerned in their dealings with other industries and in their dealings with competing operators in the same and allied industries. The salmon canners do not believe that they should be required to make further concessions which will cause their operations to be actually and competitively impossible without continuing losses."

It appears that the council-affiliated unions are unwilling to recognize the fairness of this premise.

On the contrary, in your letter of April 8th, you have advised us:

1. That our proposals are "unacceptable to all organizations" affiliated with the Maritime Council.

2. That "all organizations, save one, namely the Machinists stand ready and willing to ne-

(Testimony of Paul St. Sure.)

gotiate on the basis of the proposed agreements they have already submitted.”

3. That “it will be necessary to have reached tentative agreements with all Council unions before any agreements will be signed”.

From these statements, it is evident to us that if all unions must agree before any will sign, and if one union continues to refuse to negotiate at all, you intend to deny us the right to operate. This arbitrary stand on the part of some of your unions was one of the reasons which impelled us to write to you on April 3rd, and it now appears that your position is unchanged.

Yesterday we wired you as follows:

“Responding to letter of Bay Area District Council No. 2 Maritime Federation of Pacific delivered to Alaska Salmon Industry, Inc., at one o’clock this afternoon please be advised our proposals of April 3 remain open but are contingent upon acceptance on or before April 10. In view of rejection of these proposals by all organizations affiliated with the Council and in view of continuing refusal of Machinists to meet at all, together with your statement that tentative agreements must be reached with all Council Unions before any agreements will be signed, we fail to understand purpose to be served in resuming discussions of your original demands. However, should you desire to meet with our representatives for this or any other

Testimony of Paul St. Sure.)

purpose during the next 48 hours you may make appointment by telephoning Yukon 0452 in San Francisco before 6 p. m. today or any time tomorrow. A further reply to your letter will be delivered by messenger or by mail."

The foregoing message did not comment on your charge of "bad faith" on the part of the operators as a result of "injecting attorneys as negotiators". Suffice it to say that we do not question your selection of bargaining representatives.

Further, in connection with your reference to a letter of March 1st declaring that you would not sail with certain doctors in 1940, we have no record of receipt of any such letter by any of the operators concerned.

From the entire record, we can draw no other conclusion than that you do not desire to consider the declaration of the canners that they "desire to operate in 1940 if the unions will agree to conditions making such operations reasonably possible." We reiterate that we are desirous of operating under fair conditions, comparable with those established in competitive and allied industries, but we are unable to operate if you will not grant to us the same conditions that you have granted to other such employers.

Despite the position taken by your organizations, however, we are still willing, as we stated in our wire to you of yesterday afternoon, to meet with you to negotiate or for any other purpose on or before Wednesday, April 10, 1940, and to consider or

(Testimony of Paul St. Sure.)

bargain concerning possible arrangements for expeditions in accordance with the sailing schedules set forth in our letter of April 3, 1940.

The decision rests with you. The introduction of false issues, such as the selection of bargaining representatives, will not shift the ultimate responsibility.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By J. PAUL ST. SURE

JPSS/OB

Q. Did you on April 9th receive a wire from Mr. Cayton, or from the Maritime Federation by Mr. Cayton, in regard to this matter?

A. I believe it was a letter. I believe on that date I received a further [128] letter from Mr. Cayton—in fact, two letters the 9th of April. One of them was specifically in reply to my letter of April 9th, which has been marked Exhibit L, wherein he reviewed the situation as the Maritime Federation saw it on that date and, also, on that date we received a letter setting forth or purporting to set forth the text of resolutions passed by District Council No. 2.

Mr. Madison: I will offer in evidence the first letter from the District Council of Maritime Federations to the Alaska Salmon Industry dated April 9th and ask that be marked Exhibit M; and I will offer a second letter dated April 9th from the same

Testimony of Paul St. Sure.)

party to the same party purporting to contain a copy of resolutions passed by the Maritime Federation and ask that be marked Exhibit No. N.

(Received in evidence as Respondent's Exhibits No. M and No. N, respectively.)

RESPONDENT'S EXHIBIT N

San Francisco Bay Area District Council No. 2

Maritime Federation of the Pacific

593 Market Street - San Francisco, California

DOUGLAS 0464

Cut

"An Injury to One is An Injury to All"

Union Label 173

Earl King, Honorary President

Henry Schmidt, President

Dave Thomas, Vice-President

Revels Cayton, Sec'y.-Treasurer

Trustees: C. A. Cameron, James Clayton, Patsy Ciambrelli.

April 9, 1940

Alaska Salmon Industry, Inc.,

230 California Street

San Francisco, California

Gentlemen:

This is to call your attention that in the Coordinating Committee meeting of April 9th the unions affiliated to the District Council #2 Maritime Federation of the Pacific went on record as follows:

(Testimony of Paul St. Sure.)

“That all canneries operated in 1939 under agreements with unions in the Port of San Francisco shall be operated in 1940 under agreements negotiated with the same unions.”

I feel that the motion speaks for itself and that anyone acquainted with the Salmon Packing Industry is aware of its meaning and the fair purpose for which it has been made.

Very truly yours,
DISTRICT COUNCIL #2
MARITIME FEDERATION OF
PACIFIC
REVELS CAYTON
Secretary

uopwa-34

c/e Alaska Salmon Company
Red Salmon Company
Alaska Packers Ass'n.

By Mr. Madison:

Q. Now, was there a further meeting held on April 9th or on April 10th?

A. On April 10th we met with the Committee of the Cannery Workers Union and, I believe, Mr. Anderson was, likewise, there. And there was a discussion concerning the memorandum agreement covering the members of the Alaska Cannery Workers Union in the event we were able to secure agreements with other unions which would

(Testimony of Paul St. Sure.)

permit us to go ahead with the Central Alaska operations. That is the proposal in view of the fact that the Cannery Workers contract was to be negotiated in Seattle the discussion was whether or not we could have a binding memorandum of some kind which would protect the operators here on the basis of agreement by the cannery workers union that they would abide by whatever agreement was negotiated in Seattle.

By Referee Roden:

Q. Wait a moment! When you speak about the Central Alaska operations, you mean?

A. Chignik and Karluk. Following a first meeting that I referred to with the representatives of the Alaska Cannery Workers Union on that day, the 10th of April, no understanding was reached as to the memorandum agreement, and a telegram was sent to the Cannery Workers Union by Mr. Anderson, a copy of which I hand you.

Mr Madison: We offer this telegram in evidence and ask that it be marked No. O.

(Received in evidence as Respondent's Exhibit O.)

RESPONDENT'S EXHIBIT O

WESTERN UNION TELEGRAM

April 10, 1940

You have previously advised us that you desire to negotiate all conditions for 1940 season through our Seattle office and that you have agreed to have

(Testimony of Paul St. Sure.)

resulting contracts apply uniformly for California, Oregon and Washington. Consequently we cannot sign memorandum with you on any other basis than one which will apply 1940 Seattle agreement to any operation we may undertake. If this is satisfactory to you such memorandum must be signed today if it is to cover Karluk with understanding any Karluk operation depends upon reaching agreements with other unions.

ALASKA SALMON INDUSTRY, INC.

J. PAUL ST. SURE

Send to Alaska Cannery Workers Union, 32 Clay St., San Francisco. George Anderson, 544 Market St., San Francisco.

Q. At that meeting on April 10th you have discussed, when did [129] it occur? The day and point of time?

A. Following the sending of this telegram the first meeting I mentioned, I believe, was during the morning. The telegram was sent during the middle of the day. And late in the day I received by messenger a written reply from Mr. Anderson, attorney for the Alaska Cannery Workers Union, Local No. 5, wherein he referred to the telegram which I had sent saying he had not received it until he returned to his office in the afternoon at 4:15 o'clock; and wherein he stated that his union had originally suggested the memorandum because they

(Testimony of Paul St. Sure.)

felt that it would cover the operations going to Chignik and Karluk and the men would leave on the 17th of May as they had in the past, and stated that inasmuch as they had been told for the first time a few days before that the men wouldn't leave on the 17th of May they felt there was no necessity for having any memorandum agreement or any agreement. They would await the outcome of the Seattle negotiations. Following the receipt of that letter a meeting was arranged and Mr. Anderson and members of the Negotiating Committee for the Alaska Cannery Workers Union met at our office around six o'clock in the evening and we further discussed the situation at that time.

Q. Was there any statement as to what was to be contained in the memorandum?

A. Our telegram outlined the memorandum which we desired and Mr. Anderson quotes it; which is, there should be an agreement on the part of Alaska Cannery Workers, inasmuch as they had agreed there should be a uniform contract negotiated in Seattle they should agree with us if they sailed from this port for Central Alaska they would accept the terms of that negotiated agreement at Seattle which hadn't yet been completed, sort of a covering arrangement whereby both the union and ourselves would be protected upon the understanding that the Seattle 1940 terms would govern.

Q. The 17th of May? Or the 17th of that month?

(Testimony of Paul St. Sure.)

A. Well, I am not sure. Just a moment, let me check that. (Indicating) The 17th of April.

Q. You said the 17th of May. In your last question you referred to the 17th of April, the letter being dated April 10th, you are referring to the 17th of this month? (Indicating)

A. Yes.

Mr. Madison: I offer this letter in evidence to be marked Exhibit P.

(Received in evidence as Respondent's Exhibit P.) [130]

RESPONDENT'S EXHIBIT P

Andersen & Resner
Attorneys at Law
544 Market Street
San Francisco
EXbrook 6146

George R. Andersen
Herbert Resner

April 10th, 1940

J. Paul St. Sure, Esq.
c/o Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California

Dear Sir:

This afternoon you sent me the following wire:

George Andersen
544 Market St SFRAN

You Have Previously Advised Us That You
Desire to Negotiate All Conditions for 194

Testimony of Paul St. Sure.)

Season Through Our Seattle Office and That You Have Agreed to Have Resulting Contracts Apply Uniformly for California, Oregon, and Washington. Consequently We Cannot Sign Memorandum with You on Any Other Basis Than One Which Will Apply 1940 Seattle Agreement to Any Operation We May Undertake. If This Is Satisfactory to You Such Memorandum Must Be Signed Today if It Is to Cover Karluk with Understanding Any Karluk Operations Depends Upon Reaching Agreements with Other Unions

ALASKA SALMON INDUS-
TRY INC
J PAUL ST SURE

This wire was delivered to my office and was seen by me upon my return thereto later in the afternoon at 4:15.

When we originally suggested the possibility of a memorandum agreement, such suggestion was made upon the basis that when your vessels left on the 17th of this month that many of the members of our union would be aboard said vessel in accordance with the practices of past years.

Our reason for suggesting the memorandum agreement was to avoid any unnecessary trouble, as we felt that possibly negotiations would not be completed in Seattle in time for our members to leave on the 17th. In other words, we thought we would operate as we have in the past, and the memoran-

(Testimony of Paul St. Sure.)

dum agreement would apply to those men who would leave on the 17th of this month.

At the time of making this suggestion you, for the first time advised us that no cannery workers would be taken to Alaska until the 22nd day of May. This, of course, is an attempt by your company to deprive many of the members of our union of 35 days employment in the Alaskan territory.

Upon being advised by Mr. Moore to this effect it was mutually understood at that time to-wit: about the 5th of this month, that there was no necessity for a memorandum agreement.

Our committee, including the writer, met with you today after you suggested a memorandum agreement and we told you that in view of the fact that you did not intend to employ any of our members until May 22nd, we did not see the necessity for having a memorandum agreement in view of the fact that negotiations would probably be concluded in Seattle prior to May 22nd.

If you desire to send any of our members to Alaska on the boat leaving on the 17th of this month, we will discuss the possibility of a memorandum agreement prior to that time, otherwise, we see no necessity for committing ourselves to any agreement, memorandum or otherwise pending conclusion of negotiations at Seattle.

Yours very truly,

G. R. ANDERSEN

GRA*eb

(Testimony of Paul St. Sure.)

cc: Alaska Cannery Workers Union

Alaska Packers Association

Alaska Salmon Co.

Red Salmon Co.

George Woolf

Q. The date of that letter is April 10th. The Mr. Anderson to whom you refer is whom?

A. George Anderson of the law firm of Anderson and Resner.

Q. And Mr. Anderson was the attorney at these meetings acting for the Alaska Cannery Workers Union?

A. That is right.

Q. Did anything further happen?

A. Yes. During the meeting that we had on the evening of the 10th of April.

Q. That was after the letters?

A. After the letter had been received which has just been marked in evidence Mr. Anderson reiterated the matters which are stated in the letter, particularly stating that his union or the members of the union he represented, the Alaska Cannery Workers, had assumed that they were going to in the event the expeditions to Central Alaska sailed they would go on the first voyage, which in the previous year had left, I believe, on the 17th of April; and that, consequently, or had left whatever corresponding date of the first sailing that was scheduled for this year, 1940; consequently,

(Testimony of Paul St. Sure.)

his membership had felt that it was proper to consider a binding memorandum, because the time between the preparation for sailing and the first sailing was so short it would be necessary to have a memorandum agreement covering their previous agreement to take the result of the 1940 Seattle negotiations, but that in view of the fact that it now developed it was not the intention of the packers, the Alaska Packers Association, to take the Alaska Cannery Workers on the first trip but to not take them until the second trip that they didn't think it was necessary and they shouldn't be expected to sign any memorandum agreement. They would rather sit back and wait the outcome of the negotiations in Seattle. We pointed out to them the very purpose of establishing the date before which all agreements should be negotiated was to prevent a repetition of what had occurred the previous year, which was that at the last moment the Alaska Cannery Workers had insisted upon going on the first voyage, even though there was no work for them as Cannery Workers until after the second trip to Central Alaska had been completed and that the Alaska Packers Association had consequently been required by the pressure of having the expedition tied up to take them on the first trip even though there was no work for them—but thereby the packers had been required to pay the additional salaries for the men last year, 1939, and therefore the argument that no memorandum was required didn't appeal [131] to us. That the

(Testimony of Paul St. Sure.)

very purpose of asking for the memorandum was to prevent a similar situation. And, further, it was stated by me that the understanding of Mr. Anderson that there had been no notice of the fact the men wouldn't be taken on the first trip until the 5th of April, which was the statement Mr. Anderson made, was not true.

I first pointed out to him on April 3rd in a letter which I had addressed to the various unions which was rather a long document setting forth the position of the packers we had specifically stated the men would not go on the first voyage. But long before that and on the 30th of September of the preceding year in a letter which is here, I believe our Exhibit A, Mr. Tichenor of the Alaska Packers Association had specifically told them that they would not be taken on the first voyage, and put them on notice of that fact so there would not be a repetition of the insistence upon their taking the additional men for an additional month, even though there was no work for them. Those matters were discussed between Mr. Anderson, the Committee, and myself and Mr. Moore on the evening of the 10th; and Mr. Anderson left saying that in any event the union was not prepared to and would not execute a memorandum of the kind that we desired, whereby they would agree to be bound by the outcome of the Seattle negotiations. That was the conclusion of the meetings on that day with the Cannery Workers Union.

(Testimony of Paul St. Sure.)

Q. When you speak about the first trip and the second trip—will you explain the operations there for the purpose of the record?

A. As indicated in the letter, I believe, of the 3rd of April, which sets forth the schedule for sailings as well as the offers to various unions to Central Alaska, the Schedule of sailings indicated that the ship which was to prepare for the Central Alaska operations would make, as was customary, two trips—the first trip taking those mechanics and other employes who were required to make preparation for the season and also supplies and materials and other equipment, making the call at various ports which were listed on the schedule which is set forth in April 3rd, and returning to San Francisco; making a second trip back to take additional men necessary to man the operations during the actual fishing season. When I say first and second trip I refer to those two trips as scheduled, as explained in the letter of April 3rd. [132]

Referee Roden: I understand your situation quite well in that respect.

By Mr. Madison:

Q. What happened next?

A. On the 11th of April, as confirmation of our position and discussions which were had on the evening of the 10th I wrote a letter to Mr. George Anderson in specific reply to his letter of the 10th, the one discussed at the meeting which intervened between my receiving his letter of the 10th and my reply to him under date of April 11th.

(Testimony of Paul St. Sure.)

Mr. Madison: I will offer this letter in evidence—Alaska Salmon Industry, dated April 11, 1940—and ask that it be marked Exhibit Q.

(Received in evidence as Respondent's Exhibit Q.)

RESPONDENT'S EXHIBIT Q

April 11, 1940

George R. Anderson, Esquire
44 Market Street
San Francisco, California

Dear Sir:

Replying to your letter delivered late Wednesday afternoon, I wish to confirm the statements made orally by me to you and your committee that evening.

First: Your statement that the Cannery Workers' Union first received notice on April 5th that its members would not be taken to Alaska until May 22nd, is incorrect. My letter of April 3rd addressed to the Union so stated, and as long ago as September of last year, the Alaska Packers Association informed the Union by letter that its members would not be taken on the Spring voyage.

Second: We have consistently requested a memorandum agreement covering possible 1940 operations, since the Union withdrew from negotiations in San Francisco and stipulated that the 1940 agreement would be negotiated in Seattle and have uniform application. You stated that you "see no

(Testimony of Paul St. Sure.)

necessity for committing yourselves to any agreement, memorandum or otherwise pending conclusion of negotiations at Seattle''. You know that the sole purpose of making the Spring voyage to Chignik and Karluk is to prepare for cannery operations later in the season, and if the Cannery Workers' Union is unwilling to confirm its agreement to be bound by the Seattle negotiations we would be required to risk the loss of the outlay for this voyage and for supplies for the season without any assurance as to the intentions of the Cannery Workers' Union.

Third: As stated in the enclosed letter, the expedition to Karluk will not be undertaken. We respectfully direct your attention to the fact that unless employment agreements are reached by April 12th, the expedition to Chignik will not be undertaken.

We will be pleased to meet with you further should you desire to discuss the situation.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By J. PAUL ST. SURE.

JPSS/OB

Q. Did the unions request any meeting on April 11th?

A. There were meetings held in addition to the Cannery Workers Union. There were meetings

(Testimony of Paul St. Sure.)

held with the Cooks and Stewards. Two meetings on the 10th. Alaska Fishermen on the 10th; also, on the 9th and previous day with the Sailors' Union, the Alaska Fishermens Union; and with the Masters, Mates and Pilots on the 8th. That is, there were other meetings in progress up to the conclusion of the day, April 10th. On the 11th of April a further communication was sent by us to the unions concerned reviewing the situation as it then stood and particularly replying to the letter of Mr. Cayton which had been sent to us under date of April 9th. And the matter of this claim that an attempt was made to deprive the Cannery Workers of 35 days work in 1940 was likewise mentioned in this reply, specific reference made to the letter sent the previous September stating workers would not be employed on the earlier voyage.

Mr. Madison: I would like to have that letter introduced and marked Exhibit R. That is the letter of April 11th.

(Received in evidence as Respondent's Exhibit R)

[Printer's Note: Respondent's Exhibit R is the same as Claimant's Exhibit 11, set out at page 173 of this printed record.]

Q. Were there any further meetings on April 11th other than those two you referred to?

A. On the 11th we met with the Sailors Union of the Pacific, or its representatives, rather; and also, the Alaska Fishermen. In the letter of April 11th,

(Testimony of Paul St. Sure.)

which has just been marked in evidence, the unions were specifically advised that, although the operation which had been necessary to undertake by the 10th of April that that time had passed, there was the second of the operations [133] in Central Alaska which could be undertaken if the agreements were reached upon or before the 12th of April, that is, two days later. And again their attention was called to the fact we desired to complete agreements if it were possible to do so. There were no other meetings on that day, the 11th. And on the following day we received a reply to our letter of April 11th from their Mr. Cayton as Secretary of the District Council No. 2 outlining his view of the negotiations and stating they didn't wish to see any portion of the season lost and would like to endeavor to continue negotiations.

Q. This meeting on the 11th with the fishermen, were the wages discussed? Do you recall the terms of any proposed contract discussed at that time?

A. My recollection is there were discussions, but they related entirely to the possibility of reaching an agreement on the matter of the Central Alaska operations. We were in agreement there as to the wage structure generally, the differences being matters of conditions, some penalty clauses, and various changes in the conditions of the contract as distinguished from the questions of the wages in Central Alaska.

Q. Was there an accord reached at that time as to those conditions?

A. No, there was not.

(Testimony of Paul St. Sure.)

Q. One party taking one position and another another, unable to reach any accord?

A. That is correct.

Mr. Madison: I would like to offer at this time this letter dated April 12, 1940, San Francisco Bay Area, District Council No. 2, Maritime Federation of the Pacific, Alaska Salmon Industry, Inc., and ask that it be marked Exhibit S.

(Received in evidence as Respondent's Exhibit S.)

[Printer's Note: Respondent's Exhibit S is the same as Claimant's Exhibit No. 21 set out on page 256 of this printed record.]

Q. Did anything else occur under date of April 12th?

A. On the date of April 12th there was a brief meeting with representatives of the American Communications Association had on that day; also, I sent a telegram to Mr. Cayton replying to the conclusion in his letter of the 12th of April which had been sent to me, recalling the various proposals or notifications we had given and stating to him that we were still desirous of reaching conclusions within the limits of time that had been expressed in our letter of the 3rd of April.

Mr. Madison: I would like to offer in evidence this telegram from the Alaska Salmon Industry to Mr. Cayton dated April 12, 1940, to be marked as Exhibit T. [134]

(Received in evidence and marked as Respondent's Exhibit T.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT T

Western Union

April 12, 1940.

Send to:

Revels Cayton Secretary

District Council #2

Maritime Federation of the Pacific

593 Market St. San Francisco

Replying to the conclusion stated in your letter delivered this afternoon and asking us to call a meeting of all unions, we have already notified each union in writing on March 4th, March 8th, April 3rd, April 9th; and April 11th. as well as verbally on numerous other occasions of our willingness to meet. Our offers to negotiate with any or all unions or their representatives have not been modified and are still open within the time limits stated in our letter of April 3rd.

Signed Alaska Salmon Industry, Inc.

By J. PAUL ST. SURE.

By Mr. Madison:

Q. At the meeting you mentioned with the Radio Operators Union were terms and conditions of their employment discussed?

A. Yes. They had indicated by telephone originally that they were making a request.—I say originally, that was early in March—for increases in overtime and, also, extensions of their jurisdiction

(Testimony of Paul St. Sure.)

to include hand telephone sets. We had no further meetings with them, and the brief meeting that I recall on the date that I last mentioned, too, was largely a matter of reiterating their position. But there was no detailed discussion of their agreement at that time with them.

Q. Were the demands they were making satisfactory to the operators?

A. No. We had indicated to them in our letter of April 3rd the basis upon which we felt an agreement should be reached. It was on the basis of modification of the 1939 agreement; although the wage conditions were to remain the same, the modifications being primarily an attempt to exclude certain overtime penalty pay which the union required of the San Francisco operators but did not require of the Seattle operators—particularly relating to the copying of press. Their contract out of San Francisco required that overtime be paid for the copying of press dispatches, regardless of whether they were copied or received on a regular scheduled ship or not; and, likewise, required overtime payments for the making of carbon copies. We felt those provisions should be eliminated as one of the overtime features which was unduly burdensome. Otherwise, the proposal was to renew the 1939 agreement.

Q. As a result of that meeting or at any other time did you reach an accord with this union?

A. We did not.

(Testimony of Paul St. Sara.)

Q. Taking the situation generally as it existed up to and including April 12th, at that time had you, representing the three employers in question, reached any agreement with any of the unions which are being discussed here as participating under such conditions?

A. No agreement reached with any unions affiliated with the Maritime Union of the Pacific, Interior Council No. 2. My recollection is an agreement was reached with the Blacksmith's Union.

Q. What occurred next after this April 12th date had passed?

A. There were no meetings then with any of the unions and none requested until—that is, by the unions—until the 18th of April [1935] at which time we had meetings with the Fishermens Union and with the Marine Cooks and Stewards. On that day there were separate meetings for the purpose of endeavoring to discuss or arrive at agreements covering the Bristol Bay operations of the three companies—that is, Alaska Packers, Alaska Salmon, and the Red Salmon Company. On the following day there was a brief meeting with the Cannery Workers Union for the purpose of discussing hospital and kitchen requisitions, which the Cannery Workers Union desired to have provided by the Packers; and, likewise, discussion of the proposed Manning Scales in the event an expedition was made to Bristol Bay. Also, on the 19th of April there was a further meeting with the Committee of the Fishermens Union. I believe that on the last

(Testimony of Paul St. Sure.)

meeting that I have mentioned with the Alaska Cannery Workers Union, as on the 19th of April, they requested they be officially notified of the fact that the Alaska Packers Association would not operate at Chignik and Karluk for the 1940 season; and, in consequence, a letter under date of April 22nd signed by Mr. Moore was sent to them stating that fact.

Mr. Madison: I ask that letter be marked as Exhibit of the Companies next in order, marked Exhibit U.

(Received in evidence as Respondent's Exhibit U.)

RESPONDENTS' EXHIBIT U

April 22, 1940

Alaska Cannery Workers Union
32 Clay Street
San Francisco, California

Gentlemen:

In response to your recent request, we are informing you by means of this communication that cannery operations of Alaska Packers Association at Chignik and Karluk for the 1940 season have been abandoned because of inability to reach agreement with all labor organizations involved within the time set forth in our letter of April 3rd, 1940.

Yours truly

ALASKA SALMON INDUS-
TRY, INC.

By Edward H. Moore

EHM/OB

(Testimony of Paul St. Sure.)

Q. What next occurred?

A. On the 22nd of April there was a meeting with the representatives of the Marine Cooks and Stewards Union. On the 23rd of April another meeting with the representatives of the Cannery Workers Union, that is, their Committee; and, at that time they met specifically with Mr. Halsey and Mr. Cook of the Red Salmon Canning Company to discuss Manning Scales and requisitions. There were also meetings on that day with representatives of the Carpenters Union and their Committee, I believe. That is all that occurred so far as union negotiations on the 23rd.

Q. These meetings—when you refer to these other unions, do I understand that at each of these meetings the terms and conditions of offers or possibly counter offers as set forth in that letter of April 3rd were discussed?

A. They were. That is, not the offers set forth in the letter of April 3rd, necessarily, but those offers and the proposals where they were relevant to Bristol Bay were discussed. And in connection with the offers which were limited to the Central Alaska operations in the letter of April 3rd. Any other conditions or differences that were proposed by the unions were discussed in these [136] meetings I am referring to after the 10th of April. That is, up to the 10th or 12th of April discussions related to Central Alaska, Chignik, and Karluk, and after that any meetings refer to Bristol Bay possible operations.

(Testimony of Paul St. Sure.)

Q. What occurred next?

A. On the 24th of April there was a meeting with the Sailors Union of the Pacific; and, I think, it should be mentioned in connection with meetings with the Sailors Union there had been a number prior to this time and among other difficulties that we were experiencing was that the Sailors Union of the Pacific made specific claim to certain jurisdiction over work which theretofore had been claimed by and manned by the Fishermens Union. And all during these discussions as to Central Alaska as well as the discussions which followed through the Bristol Bay negotiations the Fishermens Union took the position it would not give up its jurisdictional claim over dock watchmen and beach bosses and various others, some of whom were claimed by the Sailors Union of the Pacific. The Sailors Union, particularly, claimed the right to supply dock watchmen and, likewise, claimed the right to perform all service aboard ships to the exclusion of the fishermen who previously had performed that work. So, there was that complication running through the negotiations as well, which was not finally adjusted even up to the time of the May 3rd date when the expeditions finally were abandoned.

Q. Now, in that connection, the Sailors Union of the Pacific, are they a member of the Maritime Federation?

A. No, they are affiliated with the American Federation of Labor.

(Testimony of Paul St. Sure.)

Q. The Fishermen affiliated entirely with the C. I. O.?

A. No, I believe not entirely, but I would say it this way. The American Federation of Labor Sailors Union is not affiliated with the American Federation of the Pacific. The American Federation of the Pacific is primarily, in this District at least, C. I. O. But I believe some of these unions which are affiliated of the Council here are still affiliated with the American Federation.

Mr. Resner: Fishermens Local No. 68 and the Firemen have A. F. of L. All the rest are C. I. O.

A. (By Mr. St. Sure) There is no particularly harmonious relationship between the Sailors Union of the Pacific—at least so far as these negotiations were concerned—and District Council unions of the C. I. O., or Maritime Federation, rather. [137]

Mr. Resner: Let me interpose an objection at this time. As I see it, this has nothing to do with the claim of these Claimants with regard to unemployment compensation. I don't think it is an issue in the case at all.

Referee Roden: I agree with you.

A. (Mr. St. Sure) Simply because of the position taken by the Maritime Federation unions it was all or not on the basis of the agreements; and we had this difficulty, through the basis of the claim presented by the Sailors Union. But it did involve the entire picture. That is the only reason I mentioned it.

(Testimony of Paul St. Sure.)

By Mr. Madison:

Furthermore, it does seem to have some bearing upon the question of whether these negotiations were being conducted in good faith. It shows the entire situation. What happened next?

A. On the 25th of April there was a further meeting of the Fishermens Union to discuss possible Bristol Bay operations; and on the following day a letter was sent to the unions concerned under date of April 26th pointing out the period that had elapsed since the last communication—pointing out the meetings which had been had. Particularly, stating that the the Alaska Salmon Company would not undertake to operate at Bristol Bay in 1940, we having just before that time been so advised by Mr. Fleager of the Alaska Salmon Company. And, again, in this letter we requested that the unions communicate with us and endeavor, if possible to do so, to reach agreements for operations at Bristol Bay by the Alaska Packers Association and Red Salmon Company, and those agreements to be reached before the 3rd of May if it were possible to do so because that was the last date upon which we could safely make preparations for the expedition.

Mr. Madison: This letter has already been introduced and marked Exhibit 6. And, if it hasn't been introduced in full, I would like to move at this time that the entire letter be deemed as part of the record. If it is necessary to give it a number as an entirety, I would ask that it be given, let us say, double-U(UU). I think it is already in.

(Testimony of Paul St. Sure.)

Mr. Resner: I have no objection to any of these letters going in as part of this whole picture.

Mr. Madison: I know. I think in some of the early part. (Indicating) Mark it next in order.

(Received in evidence as Respondent's Exhibit V.) [138]

RESPONDENT'S EXHIBIT V

Alaska Salmon Industry, Inc.,
230 California Street
San Francisco, California
Telephone YUkon 0452

April 26, 1940.

To The Unions Concerned:

On April 16th we sent a letter to each union representing workers concerned with the Bristol Bay fishing and cannery operations out of San Francisco for the 1940 season calling attention to the fact that it would be necessary to complete all working agreements or preparations if any expeditions were made, and pointing out that unless such agreements were reached with all unions within a reasonable time before the last safe date for sailing, the expeditions would not be undertaken. We requested immediate negotiation meetings in order that progress might be made.

During the ten day period that has intervened we have held numerous meetings with union representatives and have received proposals from each union, the last one being received today from the

(Testimony of Paul St. Sure.)

East Bay Union of Machinists. Such time as has not been occupied in meeting with union representatives has been spent by us in analyzing the union proposals and in preparing counter proposals in those instances where the union demands were not acceptable. These counter proposals have been communicated to a majority of the unions already and the remainder will receive them in written form immediately.

We do not believe it is necessary to repeat the statements made in our previous communications concerning the importance of time factor in connection with concluding these agreements. We do believe it essential, however, to inform you of the exact status of the operators we represent and what operations they intend to undertake if satisfactory agreements can still be reached. Consequently, we have to advise you as follows:

Alaska Salmon Company will not undertake any expeditions out of San Francisco to Bristol Bay in 1940.

Alaska Packers Association and Red Salmon Canning Co. desire to send expeditions and to operate at Bristol Bay during the 1940 season, but cannot and will not undertake to do so unless mutually satisfactory working agreements are reached with all unions on or before midnight of Friday, May 3rd, 1940.

In addition to this general letter which is being sent to all unions concerned, individual communica-

(Testimony of Paul St. Sure.)

tions are being forwarded to those organizations which have not yet discussed with us their proposals or our counter proposals, advising them of our desire to meet with them immediately. We will appreciate your communicating with us at once concerning further negotiations to the end that agreements may be completed, if it is possible to accomplish this before midnight on the 3rd of May, 1940. In this connection we must reiterate that all agreements must be completed before that time, otherwise the expeditions referred to will not be undertaken.

Yours truly,

ALASKA SALMON INDUS-
TRY, INC.

By J. Paul St. Sure

JPSS/OB

By Mr. Madison:

Q. On April 27th did anything occur?

A. On the 27th a letter was addressed to the Alaska Cannery Workers Union by the Alaska Salmon Industry, Inc., signed by Mr. Moore, stating in view of the fact that the negotiations for a contract with the Alaska Cannery Workers was being negotiated in Seattle to cover the Bristol Bay operations that we would appreciate their communicating with us.—That is, the Local Committee—for the purpose of endeavoring to execute a memorandum agreement covering the Bristol Bay operations of the same type of agreements we had endeavored to secure covering the Central Alaska operations.

(Testimony of Paul St. Sure.)

Mr. Madison: I ask that letter dated April 27th be marked as Exhibit W.

(Received in evidence as Respondent's Exhibit W.)

RESPONDENT'S EXHIBIT "W"

April 27, 1940

Alaska Cannery Workers Union
32 Clay Street
San Francisco, California
Gentlemen:

In view of the fact that negotiations between your organization and the Bristol Bay salmon packers operating out of San Francisco are being conducted through the Seattle office of Alaska Salmon Industry, Inc., we desire to discuss with your representatives as soon as possible the matter of a memorandum adopting the 1940 Seattle contract to whatever expeditions may be undertaken from San Francisco.

As our previous correspondence has indicated, it will be necessary that such a memorandum be executed not later than Friday, May 3, 1940, or it will be impossible to continue further with plans for Bristol Bay operations. We would therefore appreciate hearing from you at your earliest convenience in order that an appointment may be made to discuss this matter.

Yours truly

ALASKA SALMON INDUS-
TRY, INC.

By Edward H. Moore

EHM/OB

(Testimony of Paul St. Sure.)

Q. Now, did you on the same day send a wire to Mr. Cayton?

A. I did, on the 27th of April, a telegram addressed to Mr. Cayton requesting he communicate with us and give us such assistance he could to endeavor to work out agreements with the various unions with which he was acting as Coordinator.

Q. During the days we have been discussing was there any meetings with any of these unions? That is to say, the 26th, 27th, and 28th?

A. There were no meetings on the 26th, 27th, the 28th was Sunday. There was no meeting until the 29th. On the same day, the 27th of April, in response to the telegram I gave you a moment ago that I sent to Mr. Cayton I received a reply from Mr. Cayton saying he was only too happily to assist in reaching agreements, and so forth.

Mr. Madison: I would ask the telegram from Mr. St. Sure to Mr. Cayton, dated April 27th, be marked as Exhibit X.

(Received in evidence as Respondent's Exhibit X.)

RESPONDENT'S EXHIBIT X

Western Union Telegram

April 27, 1940

Revels Cayton, Secretary

Maritime Federation of the Pacific

593 Market Street

San Francisco, California

San Francisco Alaska operators advise us all con-

(Testimony of Paul St. Sure.)

tracts must be completed by midnight Friday May 3, or no expeditions will be undertaken. In view of considerable differences your offers to aid in negotiations if delays or disagreements threaten to prevent satisfactory agreements request you assist if possible in securing adjustment of differences. Will appreciate discussing situation with you at your convenience.

Alaska Salmon Industry, Inc.
J. Paul St. Sure

And that the answer to the wire, Mr. Cayton sent to Mr. St. Sure, be marked as Y.

(Received in evidence as Respondent's Exhibit Y.)

RESPONDENT'S EXHIBIT Y

Postal Telegraph

1940 Apr 27 PM 1 55

MK50 28 DL 4 Extra—MK 27 148P

Paul St Sure—

Alaska Salmon Industries Inc

230 California St

San Francisco Calif—

Only too glad to assist in any way possible in

(Testimony of Paul St. Sure.)

arriving at agreements with Federation Unions and will contact you Monday for definite appointments—

Revels Cayton

District Council #2

Maritime Federation.

#2 also Revels Cayton.

Received April 29, 1940, 9 AM.

[Stamped] 1940 Apr 27 PM 4 28

Q. The 29th of April what occurred?

A. There were no meetings on that day, My recollection is Mr. Cayton communicated with me and stated he was busy with other matters or meetings on that day, and we did make an appointment to meet the following morning. And on the morning of the 30th Mr. Cayton met with me and Mr. Moore and we discussed the situation, discussed in detail, as I recall, the various [139] contracts, the condition of negotiation of the various contracts, and the difficulties we were encountering. And I remember discussing at considerable length with him the matter of the demands of the Marine Cooks and Stewards and our counter proposals to them and difficulties we were having in endeavoring to reach some agreement with the Marine Cooks and Stewards; also, discussed the situation with relation to the Fishermens Union, and Mr. Cayton discussed, likewise, with me the matter of the method of negotiation in that we had

(Testimony of Paul St. Sure.)

found it necessary, as we had stated in our letters, to endeavor to arrive to agreements prior to the time of investing considerable sums of money in equipment because of past experience whereby at the last minute individual unions, even though they only involved the employment of a few men, had been able to hold up the entire expedition by making last minute demands. My recollection at that time is Mr. Cayton expressed to me the statement it was his belief that he didn't blame us for attempting to negotiate upon that basis. That he understood what the purpose was of the attempted method of negotiation. I believe we discussed, particularly, the fact in the previous year the American Communications Association, one of the few or, rather, one of the unions he referred to as having but a few members, had, in fact, despite the lack of proportion to the total number of employes, succeeded in holding up the expedition the previous year until they were late in getting away and the demands had to be commanded by reason of that demand at the last moment. Mr. Cayton remained then and we had a meeting with the Union, Fishermens Union, and went over in considerable detail the various matters as to conditions and otherwise we had with the Fishermens Union in connection with the Bristol Bay operations at that time. A proposal had been made for reduction of the fish price and the fishermen indicated that this time and previously they felt the cut was too drastic. We discussed with them the fact one reason why the reduction had been made in addition to the attempt

(Testimony of Paul St. Sure.)

to reduce the Maritime Marine Cooks and Stewards compensation by getting rid of the overtime was that the Fishermens Union did secure the major portion both in units as well as in total amount of the labor revenue which was paid out in the Alaska expeditions; and in addition to that that the Fishermens Union granted through its Seattle Local conditions to the Seattle Operators which were not granted to the San Francisco Operators; and this, that the Fishermens Union supplied through Seattle [140] many of the employes in the culinary departments of the work there while that same work was granted by the unions here, or claimed here—and successfully claimed by the Marine Cooks and Stewards under conditions which were so much more drastic than those the Fishermens Union granted in Seattle that the net result was our operating cost by reason of the combination of the Fishermens Union and Marine Cooks and Stewards for the same work the Fishermen did alone in Seattle were far ahead of those in Seattle. We discussed for a couple of hours the contract that had been submitted or counter proposal by the Packers for the Bristol Bay operation at that time. Later in the day we had a further meeting with the Marine Cooks and Stewards. And there was a meeting scheduled with the Cannery Workers Union, but that did not occur. That is on the 30th of April.

Q. At these various discussions you had with the Union at this time and other times did you ever have the argument presented to you by the unions that no condition of the coming season could be less favor-

(Testimony of Paul St. Sure.)

able to the union that conditions of last season because their theory and practice was never to give up anything once gained?

A. That argument was advanced in many of the negotiations. I remember particularly one of the meetings that occurred about this time when I expressed the view or the fact it was essential or at least the Cannerymen believed it was to prevent a loss or continuing loss in their operations—and a portion of the loss was a direct result of what we felt were unusually and non-competitively high labor costs. One of the union representatives, I believe it was Mr. Cobb of the Marine Cooks and Stewards, said that it was one thing for us not to operate at a loss, but they didn't want to, either. And for them to take a loss meant if they gave up any conditions they had already secured that, in effect, was operating at a loss. And, so far as they were concerned, the position was taken by the union they would not, could not, and should not, in fact, be asked to even consider reductions below the previous season's conditions.

There were, however, statements made by some of the unions in criticizing the conditions that had been secured by other unions; in other words, many of the unions we dealt with were perfectly willing to agree the other fellow had gotten more than the traffic could bear, but they would not admit their own union had secured any such condition.

Q. That is to say, the position they would take nothing less than they had before. Does that posi-

(Testimony of Paul St. Sure.)

tion apply to the position taken by the Alaska Cannery Workers?

A. So far as the actual negotiations with the Alaska Cannery Workers were concerned, the discussion of actual wages and conditions were being carried on, we assumed, at Seattle; and it wasn't until the last day or two when we came to the final attempt to secure a memorandum from them that they did express at that time a refusal to take anything which would go below the 1939 San Francisco conditions.

Q. And the same thing is true with the Fishermen, so far as their being unwilling to take anything less than 1939? A. That is correct.

Q. Did the Union write to you on April 29th a letter signed Mr. Whaley, one of the witnesses here?

A. That is correct—a letter on the 29th stating they were ready to discuss Manning Scales and Personnel general improvements.

Mr. Madison: I will introduce theis letter and ask that it be marked Exhibit Z. I don't think I offered that "Z", and I will make a formal offer for the purpose of the record.

(Received in evidence as Respondent's Exhibit Z.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT Z

Alaska Cannery Workers Union

Local No. 5, C. I. O.

George Woolf, President

Karl G. Yoneda, Vice-President

Raymond Aguirre, Secretary

32 Clay Street

San Francisco

Phone EXbrook 4871

Affiliated to

United Cannery, Agricultural Packing & Allied
Workers of America

Committee for Industrial Organization

Maritime Federation of the Pacific

San Francisco District Industrial Union Council

International Labor Defense of the United States

April 29, 1940

Alaska Salmon Industry, Inc.

230 California Street

San Francisco, California

Gentlemen:

In answer to your communication of April 27th we wish to inform you that we are ready and willing to negotiate personnel and general improve-

(Testimony of Paul St. Sure.)

ments, at your convenience, for any and all Bristol Bay canneries that you choose to operate.

Yours very truly,

[Seal]

ALASKA CANNERY WORK-
ERS UNION No. 5

M. WHALEY, per JBW.

M. Whaley, Chairman

Negotiating Committee

MW:D

uopwa—34

Received 4.05 P.M. April 29, 1940 Messenger
Boy.

Eat More Canned Salmon—Packed Under Union
Conditions

Union Label 65

Mr. Resner: Those wires are X and Y, are they not? (Indicating)

Mr. Madison: Yes. That is right.

Then, may I ask the letter from Mr. Whaley dated April 29th be marked Exhibit Z.

By Mr. Madison:

Q. Now, on April 30th did you send a letter to the unions Mr. St. Sure, summarizing the negotiations at that time? A. I did.

Q. You have described, have you, the meetings held on April 30th, already? A. Yes, sir.

Q. There were no other meetings than those you spoke of? A. That is all.

(Testimony of Paul St. Sure.)

Mr. Madison: I offer in evidence to be marked Exhibit AA letter from Mr. St. Sure to the Union dated April 30, 1940.

(Received in evidence as Respondent's Exhibit AA.)

RESPONDENT'S EXHIBIT AA

Alaska Salmon Industry, Inc.

230 California Street

Telephone YUkon 0452

San Francisco, California

April 30, 1940.

To The Unions Concerned:

On several occasions during the course of the current negotiations for working agreements in connection with proposed 1940 Alaska Salmon Cannery operations out of San Francisco, the charge has been made by Union spokesmen that the employers were not acting in good faith. This charge we have denied, both publicly and during negotiation meetings, only to be met with the further charge that we were issuing "ultimatums" and not making an effort to reach an accord.

In reply to these accusations and to evidence the true position of the operators, the following factual record of our dealings is submitted:

On March 6, 1940 all unions concerned with employment during the 1940 Alaska season were advised of our desire to negotiate working agreements.

(Testimony of Paul St. Sure.)

Our letters of March 8th, April 3rd, April 9th and April 11th, copies of which were sent to the Unions concerned, outline the course of negotiations in connection with the Central Alaska expeditions.

Expeditions to Central Alaska were abandoned because the two local lodges of the Machinists' Union refused to meet until disputed claims for prior years had been paid; the Alaska Cannery Workers Union declined to execute a memorandum agreement prior to the time set for the sailing of the preliminary expedition; and all other unions except the Master, Mates and Pilots and the Brotherhood of Blacksmiths rejected the proposals made in our letter of April 3rd.

On April 16th, following the abandonment of the Central Alaska expeditions, a further letter was sent advising all unions of the necessity of completing all negotiations before any preparations would be made to sail to Bristol Bay. This letter again stated our desire to operate, if satisfactory agreements could be reached, and requested immediate negotiations.

Following the sending of our letter of April 16th we met with representatives of the following unions:

1. Alaska Fisheremen's Union, on April 18, April 19 and April 25.
2. Marine Cooks and Stewards, on April 18 and April 22.
3. Alaska Cannery Workers Union, on April 19 and April 23.
4. Brotherhood of Carpenters, on April 23.

(Testimony of Paul St. Sure.)

5. Sailors Union of the Pacific on April 24.

Prior to April 16th, written proposals had been received from all other unions except the Machinists, but no meetings for purposes of negotiation were held with these unions after April 16, nor have any been held up to date, despite our repeated requests for such meetings.

Because of the approach of the opening date of the fishing season, and the necessity for purchasing supplies and making other preparations, a further letter was sent to each union on April 26th stating that all agreements had to be completed by midnight of May 3rd or the expeditions could not be undertaken. On the morning of April 26th the East Bay Machinists finally sent a written proposal to our office. By April 27th we had forwarded written counter proposals to all unions except the machinists and the radio electricians (A.C.A.), and those proposals were forwarded yesterday.

As of today, the situation relative to negotiations is as follows:-

1. The Brotherhood of Carpenters have rejected our offer to renew their contract which was in force last season.

2. The Marine Firemen have rejected our proposal to continue base wages and substantially the same basic conditions contained in last season's agreement, although the wages offered exceed those in effect under current agreements between the same union and other ship owners on the Pacific Coast.

(Testimony of Paul St. Sure.)

3. The Sailors Union of the Pacific have rejected our offer to renew their 1939 agreement, with minor changes not affecting wages, although the wages offered exceed those accepted by the same union from other ship owners on the Pacific Coast within the past few days.

4. The Brotherhood of Blacksmiths have accepted our offer to renew their contract which was in force last season.

5. The Alaska Fishermen's Union has scheduled further meetings with us to discuss our counter proposal which contains a reduction in the price for fish caught at Bristol Bay and other changes.

6. The Marine Cooks and Stewards have scheduled further meetings to discuss our counter proposal which contains reductions in overtime and penalty payments, but which offers to continue basic wages in excess of those accepted by the same union from other ship owners on the Pacific Coast.

7. The Machinists Union has not replied to our counter proposal which offers the same conditions as those already approved by the same union for operations out of Seattle in 1940.

8. The Masters, Mates and Pilots have scheduled further meetings to discuss with us our counter proposals which offer the same basic wages as 1939, with certain modifications as to working conditions.

9. The American Communications Association has not replied to our counter proposal which offers the same wages and conditions as those approved

(Testimony of Paul St. Sure.)

by the same union for work out of Seattle in 1939, and which exceed those now being asked of other ship owners on the Pacific Coast by the same union.

10. The Marine Engineers Beneficial Association has not replied to our counter proposal which offers to continue 1939 basic wages, which wages exceed those now approved, by the same union under existing agreements with other ship owners on the Pacific Coast.

11. The Alaska Cannery Workers have agreed to negotiate at Seattle on an industry-wide basis and have scheduled further meetings to discuss with us a memorandum agreement to cover such negotiations.

The counter proposals which we have submitted to each union are in accord with our policy as stated in our letter of March 3rd as follows:

“Each union thus far contacted has been advised by the operators representatives that operating costs under union contracts have mounted to such an extent that no further increase can be granted and further, that certain conditions, particularly those involving overtime claims of certain unions must be corrected if the industry is to be enabled to continue in business.”

In that same letter, the following statement was made also, and it applies to the employer's proposals for Bristol Bay operations:

“The operators desire to emphasize that they

(Testimony of Paul St. Sure.)

(the proposals made by the operators) are in all instances equal to or in excess of conditions already established and approved by the unions concerned in their dealings with other industries and in dealings with competing operators in the same and allied industries. The salmon cannery do not believe they should be required to make further concessions which will cause their operations to be actually and competitively impossible without continuing heavy losses.”

We reiterate that the offers we have made, both as to contract conditions and for continuation of negotiations, are in good faith and in a sincere desire to reach agreements before the date when abandonment of preparation must occur. If operations at Bristol Bay are to be undertaken, all unions concerned must be willing to attempt to conclude negotiations in equal good faith and with the utmost haste.

We sincerely direct your attention once again to our letter of April 26th setting forth the date which controls these negotiations.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By J. PAUL ST. SURE

JPSS:EG

(Testimony of Paul St. Sure.)

By Mr. Madison:

Q. What occurred on May 1st?

A. On the 1st of May there was a meeting of the Cannery Workers Union Committee—Mr. Whaley was present, I believe. Mr. Anderson, was there, also—at which there were discussions concerning the matters referred to in the letter of April 30th. [142] I will have to change that. My recollection is wrong. That meeting was held in connection with a memorandum covering the Bristol Bay operation. But at that time we asked the union to agree to a memorandum which would provide that in the event that no agreement were reached at Seattle covering the Cannery Workers operation or working conditions that the 1939 Seattle agreement would be the basis for compensation and for working conditions. At that time the union insisted that the 1939 San Francisco conditions be the ones which would be the basis upon which to fall back in the event there was no 1940 Seattle agreement reached. At the same time we requested or suggested that a local agreement covering Daily men, who had always been separately dealt for the in San Francisco, be worked out inasmuch as there was some question as to whether or not Seattle would negotiate a contract or memorandum covering Daily men. Again the question of differences in jurisdiction affected us in that in Seattle the Daily men were not members in the same union in all instances as they were in San Francisco. Those discussions lasted for an hour or better during the morning of the 1st of

(Testimony of Paul St. Sure.)

May. Then, there were further meetings in May. A meeting was had with the representatives of the Machinists Union during the afternoon of that day.

Q. May 1st?

A. May 1st, yes, I would like to state about this time or a day or two before this time written counter proposals were prepared and submitted by the Alaska Salmon Industry, Inc., to each of the unions with whom we had been dealing or attempting to deal over this period. And I have here copies of the counter proposals which were forwarded to each of the unions as a basis for discussion in an effort to summarize the previous negotiations that we had had and to, likewise, constitute a counter proposal upon which the unions could act in advance of the deadline, so-called, that had been set for the 3rd of May. These agreements or counter proposals, rather, were specifically addressed to the American Communications Association, Carpenters Union, the Firemen, Engineers, Marine Cooks and Stewards, Sailors Union, Machinists Union—that is, the two unions concerned. The Fishermen's Union; the Masters, Mates, and Pilots; Cannery Workers Union not being included because of the fact the specific negotiations on wage conditions were being conducted in Seattle.

(Remarks were made off the record.)

Mr. Madison: May I ask for a recess for about two minutes? [143]

(Testimony of Paul St. Sure.)

Mr. Resner: I will be willing to stipulate with this proviso, the claims of all the Claimants together with the names of the 1939 personnel of Alaska Salmon be copied into the record—all other exhibits not to be copied into the record.

Mr. Madison: In other words, you stipulate as I have said with the exception of Exhibit marked No. 14. Is that correct

Mr. Resner: No. 14 and No. 5.

Referee Roden: What is No. 5?

Mr. Resner: No. 5 is the letter from Mr. Anderson to the Alaska Unemployment Compensation Commission regarding the claim of Frank L. Aragon together with a list of all the other claimants that we have at this time, a list of as having made claims. No. 14 is the personnel for the 1939 season of the Alaska Salmon Company. And these two we want copied into the record. The others it is not necessary.

By Mr. Madison:

Q. Do In understand that these proposals which you have just referred to were given to the unions referred to in these proposals?

A. That is correct.

Mr. Madison: I will ask that group of proposals be marked as Cannery Exhibit BB.

(Received in evidence as Respondent's Exhibit BB.)

No. 10425

United States
Circuit Court of Appeals

For the Ninth Circuit.

FRANK L. ARAGON and Other Applicants, Members of
Alaska Cannery Workers Union Local No. 5, and ALASKA
CANNERY WORKERS UNION LOCAL No. 5 on Be-
half of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF
THE TERRITORY OF ALASKA, NOBLE DICK, R. E.
HARDCASTLE and R. S. BRAGAW, as Members of
and Constituting Said Commission, and ALASKA PACK-
ERS ASSOCIATION, a Corporation, ALASKA SALMON
COMPANY, a Corporation, and RED SALMON CAN-
NING COMPANY, a Corporation,

Appellees.

Transcript of Record

In Two Volumes

VOLUME II

Pages 395 to 767

Upon Appeal from the District Court of the United States
For the Territory of Alaska
First Division

FILED

JUL 22 1943

No. 10425

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Transcript of Record
In Two Volumes
VOLUME II
Pages 395 to 767

Upon Appeal from the District Court of the United States
For the Territory of Alaska
First Division

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT BB

Our counter proposals.

1. American Communications Assn.—by letter to Hansen.
2. Carpenters—1939 contract.
3. Firemen—proposal attached
4. Engineers—Steam & diesel and gas operators proposal attached
5. Cooks proposal attached
6. Sailors—will have to get copy—in general, 1939 contract with percentage in lieu of overtime
7. Machinists—offered basic 1940 Seattle contract—will have to get copy.
8. Fishermen—covered by letter of April 19.
9. Masters, Mates & Pilots—1939 contract with percentage in lieu of overtime—will get copy.

(Copy)

April 29, 1940

American Communications Association
Hansford Building
268 Market Street
San Francisco, California
Attention Mr. Hanson

Gentlemen:

In accordance with our letter of April 26, 1940, we submit to you the following proposal for anticipated operations of Alaska Packers Association and Red Salmon Canning Company in Bristol Bay for the 1940 season.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

As our proposal we submit to you the 1939 contract between the American Communications Association and the Seattle Salmon Cannery, a copy of which is enclosed herewith, together with the following modifications:

1. Additional conditions covering Radio Operator Tallymen shall be:

a. Radio Operator-Tallymen shall receive the sum of \$163.00 per month.

b. Radio Operator-Tallymen shall work any 8 hours out of 24, between midnight and midnight, without payment of overtime.

c. Radio Operator-Tallymen may be required to perform tally work not to exceed 4 hours during any day. Any tally work in excess of 4 hours during any day shall be paid for at the regular overtime rate.

d. After arrival in Alaska and prior to the fishing season Radio Operator-Tallymen may be required to perform duties involved in installation of electrical and radio equipment and such additional Tallymen duties as were performed during the 1939 season by Radio Operator-Tallymen, provided that such work shall not exceed 8 hours between the hours of 8 a.m. and 6 p.m. during any day, and still further provided that such work does not infringe upon the jurisdiction of any other union whose members are employed in Alaska.

2. Radio Officers shall receive and copy radio press or news dispatches during the regular straight

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

time working period without payment of overtime, and shall make such copies thereof during regular straight time working period as may be required, without payment of overtime.

3. The union shall agree to furnish competent men within the employments covered by the contract.

4. There shall be no obligation on the Company's part to furnish radio press or other news service if to do so would require payment of overtime to any of the Company's employees.

5. There shall be no obligation on the part of the Company to continue any employment or compensation hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

6. The contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party in writing of termination of the contract or requests re-negotiation.

As we have previously advised you, it will be necessary for us to have reached agreements with all unions involved not later than Friday, May 3,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

1940, if any expeditions are to be undertaken to Bristol Bay this season by the cannery.

Yours very truly,

ALASKA SALMON INDUSTRY,
INC.

By EDWARD H. MOORE

EHM: CH

Pacific Coast Marine Firemen, Oilers, Watertenders
and Wiper Association

Agreement

This agreement entered into this ----- day of May, 1940, between Alaska Salmon Industry, Inc. (representing Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association (herein referred to as the Union),

Witnesseth:

Wages

Section 1. On vessels operated in coastal voyages to Alaska and return without any regular members of the crew being assigned to work ashore in the canneries, or without the vessel engaging in fishery operations:

Foremen	\$105.00	per month
Oilers	105.00	“ “
Watertenders	105.00	“ “
Utilitymen	105.00	“ “

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 2. On vessels engaged in cannery voyages, when part of engineroom crews are assigned to work ashore in the canneries, or vessels engage in fishery operations:

Firemen	\$145.00 per month
Oilers	145.00 " "
Watertenders	145.00 " "
Unlicensed Junior (Etolin)	145.00 " "
Utilitymen	145.00 " "

These wages shall apply from date of joining in San Francisco until arrival back in the same port.

Section 3. When men are hired for standby, they shall be paid at the flat rate of Six Dollars and Fifty Cents (\$6.50) daily. For work during the standby period on Saturday afternoons, Sundays and holidays, and in excess of eight hours, they shall be paid at time and one-half of the overtime rate.

Section 4. The wages of monthly men kept by on the Company's vessels until the 1941 season shall be at the rate of \$140.00 monthly.

Section 5. Men assigned as pumpmen at Nushagak shall have the sum of Twenty-five Dollars (\$25.00) added to their compensation for the season, for preparing their own meals. Relief pumpmen at Nushagak shall receive Ten Dollars (\$10.00) in addition to their regular wage.

Section 6. Men assigned to coal burning tugs at canneries shall be paid Twenty Dollars (\$20.00) per month in addition to their regular wages during the period of such assignment.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Overtime and Overtime Rates

Section 7. The overtime rate shall be One Dollar (\$1.00) per hour. It shall be paid in unbroken hours for work performed as follows:

(a) For all work in excess of eight hours daily.

(b) For all work performed on Saturday afternoons, Sundays and holidays while vessel is in port, or men are ashore in the canneries.

In port shall mean while the ship is alongside the dock or anchored in the roadstead.

Overtime starts with FWE Boll on arrival, ends with All Clear on departure.

(c) For excessively dirty work, and for work in tanks, cleaning tank tops and bilges.

(d) When directly engaged in loading or discharging bulk oil for other parties from which revenue is derived by the vessel on which they are employed.

(e) When transferred to shore in barges or tugs or back to the ship when the hours of labor and traveling time exceed eight on any one day reckoned from midnight to midnight, or when such traveling time occurs on Saturday afternoons, Sundays or holidays.

(f) For firemen at the canneries relieving for meals; the fireman making such meal relief for the 8 to 4 to 12 watches shall be credited with one-half hour's overtime.

(g) As provided for violations of sections as mentioned hereinafter.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(h) As provided in the working rules.

Section 8. Holidays observed under this Agreement shall be: New Year's Day, Washington's Birthday, Lincoln's Birthday, Memorial Day, Independence Day, Labor Day, Armistice Day, Thanksgiving Day, and Christmas Day. In port, all holidays observed by the International Longshoremen and Warehousemen's Union.

Section 9. During weekends in ports, when firemen are standing eight-hour watches, the twelve hours overtime on Saturday afternoon shall be divided equally between the three watches.

Section 19. When men are called on to work cargo (Longshore work) the rate of One Dollar and Ten Cents (\$1.10) hourly shall be paid. When working penalty cargo, the penalty rate shall also apply.

Section 11. The engineroom delegate shall check his overtime records daily with the Chief Engineer, for engineroom work; and the Chief Mate for cargo work; and superintendent or authorized agent for cannery overtime.

General Rules and Living Conditions

Section 12. Members shall be supplied with clean white linen once each week, clean spread, bath and face towels, disinfectant soap and laundry soap and matches. They shall have sufficient clean blankets. Linen shall be changed every Monday. Delegates shall notify steward, captain or superintendent,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

in writing of any breach of this clause, retaining duplicate copy for reference; and, when thereafter they are not supplied with clean linen change, men shall be entitled to penalty money at the rate of one hour's overtime for each day during which such change was not accomplished. Men shall be responsible for linen and blankets furnished.

Section 13. The Company shall not discriminate against any men because of Union activities. Men shall not be required to go through picket lines established by organized labor, or will they be required to work if the vessel, or the deck at which the vessel is lying, is picketed by organized labor. Any disputes unable to be settled shall be referred back to the membership at Headquarters through the usual procedure established for settling disputes.

Section 14. (a) In the event of shipwreck or disaster necessitating abandonment of the vessel, members shall be paid all moneys due them; first-class transportation, maintenance and wages back to San Francisco; provided, however, shipwrecked men may be transferred to another of the Company's vessels. When the men's personal belongings are lost in such disaster or shipwreck, the sum of One Hundred Dollars (\$100.00) shall be paid in addition to cover such loss.

(b) Any member laid up through sickness or accident, who is unable to work according to the judgment of a physician, shall be paid all earnings up to the date so laid up, and thereafter be paid his

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

monthly wages, transportation and subsistence until placed in a hospital in San Francisco or Seattle.

(c) Members may be discharged in Alaska for refusal to perform work under the terms of this Agreement, or for other just cause, and wages shall cease at date of such discharge. Men discharged shall be given free transportation and subsistence on Company's vessels to San Francisco.

Section 15. All members while engaged under this Agreement shall receive medical and surgical attendance; and medical and surgical necessities on the vessel. Sea stores, cigarettes, tobacco and other slop chest supplies shall be stocked and sold on the basis of cost plus 10%.

Section 16. Members shall have separate quarters, washroom with fresh water shower, and toilet. These quarters shall not be shared with, or used by any others than the ship's unlicensed engineroom personnel. Quarters and washrooms shall be adequately heated. Rooms shall have mirrors, lockers and benches; bunk lights shall be supplied where possible. No bunk shall be more than two high. In the mess-room, all dishes shall be crockery ware. Unlicensed engineroom personnel shall have separate table in messroom on each vessel, and night lunch furnished for their exclusive use.

Section 17. There shall be at all times sufficient first-grade foods for the requirements of the crew, to include first-grade meats, fresh fish, and fresh

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

fruits and vegetables where possible. All ship's personnel shall be fed alike.

Section 18. Meal hours and Relief for Evening Meal: Meals shall be served as follows: Breakfast from 7:30 to 8:30 A.M.; Dinner from 11:30 to 12:30 P.M.; Supper from 5 P.M. to 6 P.M.

While on sea watches, the twelve to four and eight to twelve watches shall relieve the four to eight watch at 5 P.M. for supper on alternate days. No overtime shall be required paid for such relief.

Fifteen minutes between the hours of 10 and 10:30 A.M. and between 3 and 3:30 P.M. shall be allowed for coffee. This privilege is not to be abused.

If necessary, members shall prepare their own coffee without expense to the Company. The Company shall supply the necessary percolators, coffee, etc.

Section 19. When men are on the monthly scale, and, for any reason, such as fumigation or temporary shutdown, have to eat or sleep ashore, they shall be allowed Seventy-five Cents (75c) each for breakfast and dinner, One Dollar (\$1.00) for supper, and Two Dollars (\$2.00) for room rent.

Section 20. Engineroom crews shall not be laid off when arriving back in home ports and scheduled to return to Alaska within ten days but shall continue in the employ of the Company all through the season.

Section 21. Making any payment where liability exists, does not release the Company from liability.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 22. It is expressly agreed that no engineer, agent or official of the Company, or any Union delegate or member, has the power or the authority, to change the provisions of this Agreement in Alaska. Disputes shall be settled in San Francisco directly between the Union and the Company.

Section 23. If voyage is abandoned, due to delays caused by labor conditions, these prospective employees included in this Agreement will be paid only for the actual number of days worked at their respective wages.

Section 24. When ship is in port or roadstead, and ship's plant shut down and heat and electricity is not furnished, members of crew shall be allowed One Dollar (\$1.00) per night for lodging.

Working Rules

Section 25. Setting and Breaking Sea Watches:

(a) Sea Watches shall be set not later than twelve noon on the day of departure.

(b) In port the Chief Engineer shall decide when and if necessary to break Sea Watches, which, however, must be broken at twelve noon or twelve midnight.

(c) When Sea Watches are set and the ship fails to sail within twelve hours from the time watches are set, all time in excess of the twelve hour limit shall be paid at the overtime rate. This shall not apply in the event the delay is caused by a labor dispute, however.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(d) When Sea Watches are broken, and donkey watch is maintained, the donkey watch shall consist of the following: if cargo is being worked, one watertender or one oiler, and one fireman. When cargo is not being worked, only one fireman shall be required on watch, (with the exception of the Etolin).

Section 26. (a) When cargo is being worked an oiler shall be assigned to oil winches. He shall work any eight (8) hours in twenty-four (24) hours without payment of overtime.

Section 27. The following clarifications shall determine the duties of the respective engineroom personnel on the ships:

Firemen—Standing Sea Watches: Where there are no watertenders, he shall keep steam, watch oil pressure and temperatures, clean strainers and burners. He shall not oil any auxiliaries outside the fireroom; tend water, or do any work not directly connected with the steaming of boilers. Firemen may be assigned stations not below floorplates, or higher than ten feet from the floorplates. All cleaning work shall be confined between the hours of 8 A.M. and 5 P.M. on week days, and 8 A.M. to noon Saturdays. Any cleaning outside these hours shall be overtime. On all watches, however, he shall clean up excess oil occasioned by changing burners.

Firemen shall not blow tubes, except on an overtime basis, but may be required to assist by helping to close smokebox doors, and turning steam on and

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

off, automatic blowing of tubes not to be included as overtime.

(b) Firemen—on Donkey Watches: Shall keep steam. Shall do no cleaning or boiler work; however, he shall clean up excess oil occasioned by changing burners. After 5 P.M. and before 8 A.M., when no cargo is being worked, they may be required to look after auxiliaries in engine room.

At all times steam shall be got up by members of the MFOW&W only, and no licensed engineer shall be asked or ordered to tend fires on any ship's boilers. This provision shall also apply to vessels in home ports.

(c) Oilers: Shall oil main engine and auxiliaries; tend water when gauges are in engine room and no watertender is carried. He shall pump bilges, oil ice machine and steering gear; shall do no cleaning while on sea watches, except to mop up floor plates in front of main engine before going off watch. He shall work any eight (8) hours in twenty-four (24) hours.

(d) Watertenders: Shall tend water; watch oil pressure and condition of fires; keep check on fuel service tanks; watch blowers, stack draft and oil temperatures. When sea watches are broken, they shall do mechanical repairs in fire room, and on boiler mountings and feed pumps, between the hours of 8 A.M. and 5 P.M. When steam is in on more than two boilers, a watertender shall be on watch

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
with the fireman and receive the same overtime consideration when cargo is being worked.

(e) Utility Men: Shall do general cleaning, painting and polishing in engine department. They shall take on stores; hook up water and fuel oil hoses; work from 8 A.M. to noon, 1 P.M. to 5 P.M. week days; and 8 A.M. to noon Saturdays. They shall be required to blow tubes by hand. When the job is finished, they shall knock off for the day to clean clothes. They shall do inside boiler work on minor jobs not warranting the hiring of gangs of scalers providing overtime is paid. On no account shall they be required to clean out the quarters of Orientals.

They may be assigned ashore as firemen or oilers, or helpers to machinists, electricians, pipefitters, tinsmiths and bricklayer. They may also be assigned to clean winter layup oil off machinery.

(f) Combination men (Kanak) shall combine the duties of firemen and oilers. They shall not do any wiping or station work, but shall be required to leave safe working conditions for their relief.

(g) Chilkat and Madrono: Oiler in Alaska will work eight hours between 8 A.M. and 5 P.M. with one hour for noon meal, or two four-hour watches with eight hours off duty, dependent on tides. Work on Saturday afternoons, Sundays and Holidays while engaged in cannery operations comes within definition of "In Port".

Kanak and Kvichak:—Combination men and

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

oilers in Alaska may be required to work watches of 4 and 8 off, or 8 on and 16 off, by arrangement between the delegates and the chief engineer.

In either case, work on Saturday afternoons, Sundays and Holidays while in Bristol Bay, comes within definition of "In Port".

Sannak and Fram. There shall be one fireman on the "Sannak" and "Fram." In lieu of all overtime from time of leaving until returning to San Francisco, they shall each receive One Dollar and Twenty-five Cents (\$1.25) per thousands cases packed on the "Sannak", and \$2.50 per thousand cases on the "Fram."

(h) Unlicensed Junior—Etolin:—Hours: 8 A.M. to noon, 1 P.M. to 5 P.M. weekdays; 8 A.M. to noon Saturdays.

Shall perform maintenance work in engine department, and assist the engineers in repair work in engine department. He shall not be required to do any cleaning of boilers, cleaning paint, polishing, wire brushing, shipping or scaling.

Section 28. (a) Where ships crews are sent ashore to fire boilers, they shall be kept on the job until the ship sails or the boilers are blown down. This clause shall not be deemed to apply if man is incompetent or drunk, in which case another member of the crew shall be assigned in his place.

(b) Men assigned as firemen in canneries shall work in three watches of eight hours each, and do only firemens duty.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(c) Other men going ashore may be assigned to jobs attending any machinery driven by steam or oil. They shall assist in maintenance, overhauling and repair work and act as helpers. However, under no conditions shall they be required to work in fish tanks or hoppers, or gut or clean fish, or clean fish tanks or conveyors, or any excessively dirty work. The outside painting of fuel tanks or machinery shall be regarded as within their regular duty.

Men assigned as cannery watchmen shall be assigned as watchmen every night on a straight eight-hour watch between the hours of 6 P.M. and 6 A.M.

(d) If the men do not stand watches they may be worked any eight hours out of nine consecutive hours from Midnight till Midnight. But they must have 16 hours rest between eight hours worked or overtime be paid.

(e) If men are put to work outside in bad wet weather they should be furnished with Boots and Oil Skins.

Section 29. (a) The standby men shall be required to do regular standby work as covered by the jurisdiction of the Firemen's Union, as follows: Cleaning, chipping and painting of quarters; cleaning, chipping and painting in engine room and fire room; cleaning of condensers and hot wells; assisting engineers in maintenance work; work on boilers shall be limited to washing out waterside, assisting to overhaul valves, cleaning tube plates for water

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

tube boilers, replacing gaskets and assisting on brick work.

(b) Standby men shall be governed by the standard prevailing practice in past years, and ship on the vessel to which they are assigned by the port engineer.

(c) During such period, clauses dealing with room and meal allowances shall not apply.

(d) During such periods, any man using spray guns or chipping with air hammers shall be paid One Dollar per day extra.

Cannery Firemen for Larsen's Bay and Chignik

Section 30. (a) On the first voyage of the Chirikoff there shall be hired four cannery firemen for Larsen's Bay and three cannery firemen for Chignik.

(b) Cannery firemen shall be divided into three watches of eight hours each in Alaska. The fourth fireman for Larsen's Bay, previous to operating season, shall assist in overhauling work on by-products plant or main cannery.

(c) When assigned to by-products plant during the canning season, he shall stand an eight-hour watch between the hours of 8 A.M. and 5 P.M.

(d) Fireman for by-products plant shall be required to bring up steam on his own boiler, and shut down when day's work is finished.

(e) If emergency requires, these men shall be required to work in the engine room department of the vessel on the voyage to Alaska.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 31. The wage and working conditions of the Agreement shall not apply to the bricklayer-utilityman and his helper, whose wages shall be as follows:

Bricklayer-Utilityman -----	\$165.00 Per Month
Helper -----	145.00 Per Month

Section 32.

Overtime Rate -----	\$1.10 Per Hour
Overtime Rate for Helper-----	1.00 Per Hour

Section 33. Hours:—Eight between 8 A.M. and 5 P.M. weekdays, four on Saturdays from 8 A.M. to noon.

Section 34. Duties:—Take care of brickwork, covering pipe, concrete work, etc., at the following canneries: NN and M at Naknek, Ugashik, Egegik, and Koggiung.

Section 35. When bricklayer is employed on standby he shall receive the usual rate of pay while doing brickwork. When not engaged in this work, he may be assigned with the regular MFOU&W standby crew at \$140.00 per month.

Section 36. The Company agrees to recognize the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association as the representative for collective bargaining of all unlicensed engineroom personnel on vessels owned, operated or chartered by the Company, in the Alaska Cannery Trade; and firemen, oilers and watertenders employed in the Company's cannery operations in the Bristol Bay Area.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 37. All such personnel shall be members in good standing with the Union, and must be hired directly from the offices of the Union.

Section 38. The Union agrees to furnish experienced, capable and competent men for the jobs called for.

Section 39. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section 40. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

PACIFIC COAST MARINE FIRE-
MEN, OILERS, WATERTENDERS
AND WIPERS' ASSOCIATION

ALASKA SALMON INDUSTRY,
INC.

By -----

For:

ALASKA PACKERS ASSOCIA-
TION

RED SALMON CANNING CO.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Steam and Diesel Agreement

This Agreement entered into this day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and Marine Engineers Beneficial Association No. 97, Inc. (herein referred to as the Union),

Witnesseth:

Whereas, the Union has been recognized by the Company as the representative of their licensed employees in the Engine Room Department of their respective vessels for collective bargaining, and the parties hereto have carried on collective bargaining for the purpose of making an agreement fixing hours, wages and working conditions,

Now, Therefore, the parties hereto agree as follows:

Section 1. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its renegotiation.

Section 2. All disputes relating to this agreement or its interpretation shall be determined by a Licensed Personnel Board, consisting of two persons appointed by the Union and two persons ap-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

pointed by the Company. The parties shall submit any such disputes to decision by such board and they agree to be bound by such decision. In the event that said board shall not agree, an additional member shall be appointed by them whose decision shall be final. In the event the two parties cannot agree upon the selection of the fifth member within ten days, the Director of the San Francisco Regional Labor Board shall be requested to select said fifth member. Upon written notice from any party hereto, stating the purpose of the meeting, the Board shall meet within twenty-four hours. However, no licensed engine room officer shall be required to work under conditions which are inimical to his personal safety or health. No licensed engine room officer shall be required to work within, or pass through, picket lines established by any recognized labor union whose members are employed by the Company. The refusal of any licensed engine room officer to work under the conditions described in this section shall not be considered a violation of this agreement.

Section 3. Authorized representatives of the Union shall have the right to go on board ships of the Company at all reasonable times, at all ports, for the purpose of consulting with engine-room officers employed thereon.

Section 4. The Union agrees to aid the Company in every way to maintain the highest possible caliber of licensed personnel employed in the En-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

gine Room Department on all the vessels covered by this agreement. Preference of employment shall be given members of the Union in filling vacancies when available, provided they are qualified to fill such positions. All licensed engine room officers must be members of the Union in good standing. The Employer shall select his licensed engine room officers from the list of unemployed members of the Union on file at the local office in San Francisco.

Section 5. Any engineer covered by this agreement working in more than one capacity at different rates of pay, shall receive the higher rate of pay during the period of employment under this agreement. This shall not apply to any employee relieving any employee for ten (10) days or less.

Section 6. When vessels are in any port and meals are not furnished, \$3.00 per day shall be allowed for such. If rooms are not in proper condition to be occupied, such as beds not made up, heat and lights not furnished, etc., \$2.00 per night shall be allowed for such. The second sentence of this section shall not apply when transferred to power scows, tugboats or launch, but clean linen must be furnished weekly. It is understood and agreed that written notice will be given to the Captain before any penalty in this section shall apply so that the Captain will have time to correct the situation without penalty.

Section 7. When in port or at an anchorage, the

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

following days shall be recognized as legal holidays; All Sundays, Saturday afternoons, New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Armistice Day, Thanksgiving Day, Christmas Day. In the event that any of these holidays fall on a Sunday, the following Monday shall be observed.

Section 8. If service is satisfactory to the employer, the Chief Engineer of the following vessels, the "Etolin", "Bering", "Chirikof", "Delarof", and "American Star", will be employed on a year round basis, at the monthly rate of \$250.00 per month; for the M. S. "Kvichak", the same year round employment shall prevail at the monthly rate of \$220.00 and for the M. S. Madrono the same year round employment at the monthly rate of \$200.00. In the event the Chief Engineer's services prove unsatisfactory, then during his term at sea, full offshore pay of

\$310.00 per month for the "Etolin"
300.00 per month for the "Bering"
300.00 per month for the "Chirikof"
300.00 per month for the "Delarof"
300.00 per month for the "American Star"
270.00 per month for the M. S. "Kvichak"

will apply in lieu of the year rate of \$250.00 for the steamers above mentioned, \$220.00 for the M. S. "Kvichak" and \$200.00 for the M. S. Madrono per month. In the event of any vacancy occurring with the Chief Engineers' position, the employer

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
agrees to fill such vacancy as soon as practical by a member of the Union.

Should the Chief Engineer of the "Madrono" be laid-off at any time after the Season he will be paid \$200.00 extra to adjust for a higher seasonal basis. It is clearly understood that the Chief Engineer on the "Madrono" is not necessarily an all year-round position.

The above Chief Engineers shall be granted a vacation consisting of two consecutive weeks with full pay.

The work week for Chief Engineers in winter quarters shall consist of five days at eight hours per day.

Section 9. While in winter quarters it shall be optional with the company to employ licensed engineers at either of the following rates:

1. At the prevailing rate paid machinists of \$1.12½ per hour.
2. At the monthly rate of \$180.00, such rate to be based on a five day week, eight hours per day. (Two weeks vacation shall be granted if annually employed.)
3. When engineers are engaged to assist engineers in repair or maintenance work, they shall be paid at the rate of \$35.00 per week. The regular work week shall consist of five days, Monday to Friday inclusive.

Section 10. Within thirty days after signing off of articles, the employer shall supply the Asso-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ciation with a list of names of its members they do not wish to rehire.

However, engineers must report in person or in writing to employer not earlier than two months and not later than one month prior to sailing, stating that they will or will not return.

Wages

Section 11. When ships are in commission, the licensed engine room officers employed by the Alaska Packers' Association on the vessels as herein designated shall be paid not less than the following monthly salaries, with subsistence, quarters, bedding, weekly change of linen, maintenance and cure:

Vessel	Chief Engineer	1st Asst. Engineer	2nd Asst. Engineer	3rd Asst. Engineer	4th Asst. Engineer
SS Etolin	\$250.00	\$220.00	\$200.00	\$185.00	\$170.00
SS Bering	250.00	220.00	200.00	185.00	
SS Chirikof	250.00	220.00	200.00	185.00	
SS Delarof	250.00	220.00	200.00	185.00	
SS American Star	250.00	220.00	200.00	185.00	
SS Kanak	225.00	180.00	160.00		
MS Kvichak	220.00	205.00	185.00	170.00	
MS Madrono	200.00	195.00	170.00		
MS Chilkat	215.00	180.00	160.00		
MS Alitak	215.00	180.00	160.00		

Section 12. Hours of Labor at Sea. (a) Watch Officers: Four hours shall constitute a watch and two watches shall constitute a day's work.

(b) Non-watch Officers: Eight (8) hours from 8 A.M. to 5 P.M. shall constitute a day's work for non-watch officers at sea, provided, however, that

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

if it develops that a non-watch officer must work outside of these hours, he may do so, providing he shall not work more than eight (8) hours out of twenty-four (24) hours reckoned from midnight to midnight.

(c) All work done at sea by assistant engineers in excess of eight (8) hours a day as defined in this section, except that necessary for the safety of the passengers, crew, vessel or propulsion machinery or their auxiliaries or cargo, shall constitute overtime.

(d) At sea, no work shall be performed on Saturday afternoons, Sundays or Holidays except that necessary for the navigation and safety of the vessel, provided that all licensed engineers shall stand their respective watches as required by law.

Section 13. Hours of Labor in Port. (a) In home ports, when watches are broken, the working day shall consist of eight (8) hours between 8 A.M. and 5 P.M., and all work performed in the home port after 5 P.M. and before 8 A.M. shall constitute overtime.

(b) In all other ports when watches are broken and it is necessary for engineers to stand night watches two engineers shall maintain the watches, which shall be equally divided between 5 P.M. and 8 A.M., without the payment of overtime, for the purpose of supervising and operating the machinery necessary to keep the plant in operation, but any work performed on such night watches other

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

than that necessary for the safety of the passengers, crew, vessel or its equipment or cargo shall constitute overtime. The remaining engineer may be assigned as mutually agreed between the two parties. If assigned to day work on the ship the work day for engineers so assigned shall be eight hours between 8 A.M. and 5 P.M. All work performed by engineers assigned to day work after 5 P.M. and before 8 A.M. shall constitute overtime.

Section 14. The regular rate of overtime for licensed engine room officers shall be \$1.25 per hour.

For such work no less than one hour shall be paid. For all work exceeding one hour, straight time shall be paid at the regular overtime rate.

Section 15. When overtime work is performed, the officer performing same shall prepare in duplicate an overtime slip immediately after the work is completed and shall have same certified by the officer ordering the work to be done, and if at the cannery by the Superintendent or cannery Foreman.

The officer shall present Chief Engineer, Superintendent or Cannery Foreman with one of the duplicate copies even if not certified; disputes relating to this section shall be determined as provided for in Section 2.

Section 16. On vessel where the Chief Engineer is required to stand a regular sea watch, the Chief

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Engineer shall be entitled to the same working conditions regarding overtime as an Assistant Engineer.

Section 17. No Chief Engineer shall do work which will prevent Assistant Engineers from receiving overtime pay.

Section 18. When fuel is being transferred for other Companies from which revenue is being derived, watch engineers shall be paid at the regular overtime rate.

Section 19. While at the fishing stations, work hours on tugboats, S. S. "Kanak", M. S. "Chilkat" and M. S. "Alitak", shall consist of eight (8) hours out of twenty-four reckoned from midnight to midnight, Saturdays, and Sundays excluded, but from Friday midnight to Saturday noon, four hours shall constitute one day's work.

Section 20. Work hours of engineers assigned to maintenance in cannery shall be between the hours of 8 A.M. to 12 noon, and from 1 P.M. to 5 P.M. on week days; work hours on Saturdays shall be from 8 A.M. to 12 noon. Work hours of engineers assigned to maintenance work on launches shall be 8 hours in 24 reckoned from midnight to midnight. Engineers transferred to cannery shall be quartered in rooms not having more than two beds if possible. Engineers shall not share room with any other but an engineer.

Section 21. All work performed by Engineers while working ashore assigned to maintenance in

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

cannery or over launches on Saturday afternoons, Sundays, or holidays shall be paid for at the regular overtime rate. This not to apply to Engineers assigned to launches working on percentage.

Section 22. Chief Engineers shall be employed or discharged by the owners or Superintendent Engineer. Assistant Engineers shall be selected by the Chief Engineer, subject to the approval of the owner or Superintendent Engineer. The Chief Engineers shall only be discharged by the same authorities. When assigned to shore duty, engineer shall carry out the orders of the Superintendent or Company's agent.

Section 23. Wherever Union members were employed in the past operating stationary power plants, such members shall continue to operate same.

Section 24. No unlicensed engine room personnel off watch shall be permitted to open valves in engine room; such duties shall be performed by the Engineer on watch or at his order only, issued to the unlicensed crew on watch.

Working Conditions

Section 25. Sea watches shall be set at midnight preceding sailing day and shall be broken at noon on day of arrival.

Section 26. For the safety of passengers, crew, vessel or her equipment or cargo, an Engineer on watch while vessel is being navigated shall not

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

be permitted to do work that takes him away from engine room or fire room.

Section 27. While in Alaska, no less than two engineers must be kept while loading and discharging. If refrigerating plant is used between discharging and loading, two engineers must remain aboard. This does not apply to M. S. Madrono.

Section 28. Under no condition shall a Chief or Assistant Engineer remain alone aboard ship—at least one Fireman or Oiler must remain aboard. This does not apply to M. S. Madrono.

Section 29. Under no condition shall a Chief Engineer or Assistant Engineer do his own cooking aboard ship. A cook must be retained.

Section 30. In the home port after leaving winter quarters two night engineers shall be employed. They shall be paid at the rate of \$8.00 per night. No overtime to be paid night engineers when cargo is worked. This does not apply to M. S. "Kvi-chak" and M. S. "Madrono".

Section 31. Unless a separate officers' mess is provided for their use, all engineers shall be permitted to take their meals in the regular ship's saloon.

Section 32. A chair must be assigned to each engineer in the dining saloon.

Section 33. While ashore, all engineers' meals shall be served in the officers' mess room.

Section 34. Should Chief Engineer be assigned to shore duty while at the fishing stations, As-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

sistant Engineer responsible and in charge shall be paid Chief Engineers' scale during the absence of Chief Engineer.

Section 35. While ship is at anchorage at Winter Quarters, power transportation must be furnished to and from the ship. (Boat must have in-board power and must be of sufficient sturdiness to withstand winter storms in bay.)

Section 36. For the purpose of this agreement, the home port shall be considered the port where the company's offices and terminals are located and articles are signed and terminated.

Section 37. A full complement of licensed engine-room officers shall be employed at all times when vessels enter commission, at the beginning of the season, until ship returns to winter quarters.

The time when ship enters commission shall be defined as such time when stevedores are first used after the vessel has departed from winter quarters, destined for any loading terminal or San Francisco or for direct departure to Alaska.

While the ship is loading or discharging between the Spring and Summer trips, and between the Summer and Fall trips, licensed engineers shall be retained.

If at winter quarters, the winter quarters scale shall prevail.

Section 38. If employer sees fit, engineers who have been in the employment of the company during the past season shall be given preference of

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
employment and promoted when opportunity presents itself. At the employer's option, engineers shall have the privilege of going back on the jobs on which they served last, provided former employee is in good standing in the Union.

Section 39. A member laid up through sickness or accident resulting from his employment, who is unable to work in the judgment of a physician, shall be paid all earnings up to date so laid up, and thereafter be paid his monthly wages, transportation and subsistence until placed in a hospital in San Francisco or Seattle.

Section 40. A complete and certified medicine chest must be kept aboard at all times when ship is in commission. All members while engaged under this agreement shall receive free medical and surgical attendance, excepting venereal diseases.

Section 41. All claims pertaining to rate of pay, overtime, meals or lodgings, must be filed with company within thirty days after termination of the articles.

Section 42. The Union agrees to furnish competent men within the employments covered by this agreement.

Section 43. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

In Witness Whereof the parties hereto have set their hands and seals this day of, 1940.

ALASKA SALMON INDUS-
TRY, INC.

By

For: ALASKA PACKERS
ASSOCIATION
RED SALMON CANNING CO.

MARINE ENGINEERS'
BENEFICIAL ASSOCIA-
TION No. 97, Inc.

By

MARINE ENGINEERS' BENEFICIAL ASSO-
CIATION NO. 97, INC. GAS OPERATORS
AGREEMENT

This agreement entered into this day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and Marine Engineers Beneficial Association No. 97, Inc. (herein referred to as the Union),

Witnesseth:

Whereas, the Union has been recognized by the Company as the representative of their licensed employees in the Engine Room Department of their respective vessels for collective bargaining, and the parties hereto have carried on collective bargaining

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
for the purpose of making an agreement fixing hours, wages and working conditions,

Now, Therefore, the parties hereto agree as follows:

Section 1. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section 2. All disputes relating to this agreement or its interpretation shall be determined by a Licensed Personnel Board, consisting of two persons appointed by the Union and two persons appointed by the Company. The parties shall submit any such dispute to decision by such board and they agree to be bound by such decision. In the event that said board shall not agree, an additional member shall be appointed by them whose decision shall be final. In the event the two parties cannot agree upon the selection of the fifth member within ten days, the Director of the San Francisco Regional Labor Board shall be requested to select said fifth member. Upon a written notice from any party hereto, stating the purpose of the meeting, the Board shall meet within twenty-four hours. However, no licensed engine-room officer shall be required to work under conditions which are in-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

imical to his personal safety or health. No licensed engine-room officer shall be required to work within, or pass through, picket lines established by any recognized labor union whose members are employed by the Company. The refusal of any licensed engine-room officer to work under the conditions described in this section shall not be considered a violation of this agreement.

Section 3. Authorized representatives of the union shall have the right to go on board ships of the Company at all reasonable times, at all ports, for the purpose of consulting with engine room officers employed thereon.

Section 4. The Union agrees to aid the Company in every way to maintain the highest possible caliber of licensed personnel employed in the engine room department on all the vessels covered by this agreement. Preference of employment shall be given members of the Union in filling vacancies when available provided they are qualified to fill such positions. All Marine Engineers or Operators must be members of the Union in good standing. The Company shall select its licensed engine room officers from the list of unemployed members of the Union on file at the local office in San Francisco.

Section 5. Any engineer or operator covered by this agreement working in more than one capacity at different rates of pay, shall receive the higher rate of pay during the period of employment under

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

this agreement. This shall not apply to any employee relieving any employee for ten days or less.

Section 6. When vessels used in transporting men to Alaska are in any port and meals are not furnished, \$3.00 per day shall be allowed for such. If rooms are not in proper condition to be occupied, \$2.00 per night shall be allowed for such. It is understood and agreed that written notice will be given to the Captain before any penalty in this section shall apply so that the Captain will have time to correct the situation without penalty.

(a) Jurisdiction is hereby claimed by the Union over all engineers and/or operators on all tug boats and launches regardless whether or not they have pilot house control, except where the vessel is controlled by signal or bell system from pilot house, when in such case an engineer or operator shall be in charge in the engine room.

Section 7. When the vessels are in commission, the engineers and/or operators employed on dispatch launches and tug boats employed by Company on vessels as herein designated shall be paid not less than the following monthly salaries with subsistence, quarters, bedding, soap, matches, change of linen every week, maintenance and care. In the event the linen, towels, soap is not issued after written notice is served on proper authority on the seventh day of each week, a penalty of One Dollar (\$1.00) per day shall prevail until same is

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

received unless due to cause beyond control of the Company. Sufficient blankets shall be furnished each man.

	Horse Power	Wages
Dispatch boats and tugs.....	10 to 35 H. P.....	\$150.00 per mo.
Tugs and power barges.....	36 to 100 H. P...	160.00 " "
Tugs and power barges.....	101 to 150 H. P.	170.00 " "
Tugs and power barges.....	151 H.P. and up	180.00 " "
Dispatch boats "Loon"		
"Peregrin" and		
"Plover"		160.00 " "

A Ten Dollar (\$10.00) increase per month shall be paid over scale to engineers or operators employed on twin screw tugs or power barges.

Ten Dollars (\$10.00) extra per month shall be paid over the scale to engineers or operators on tugs, or power barges with pilot house control.

Section 8. In lieu of all overtime, except as hereinafter provided, the engineers and/or operators shall receive the appropriate percentage on the pack as follows:

For 8 line cannery.....	\$1.25 per M cases
For 7 line cannery.....	\$1.43 " "
For 4 line cannery.....	\$2.50 " "
For 2 line cannery.....	\$5.00 " "
For 1 line cannery.....	\$10.00 " "

Engineers and/or operators shall tally fish when required without payment of overtime.

Section 9. (a) Prior to time tugs, launches, dispatch launches, and power scows are put in commission when operator or engineer is engaged in repair or maintenance work, working hours shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

be eight (8) hours in twenty-four (24) hours reckoned from midnight to midnight. Operators shall assist in all repairs on their own boats, but this shall not apply to machine shop work.

When an operator works other than repairing, operating or maintaining dispatch boats, tugs, launches, or power scows, that work shall be classified as overtime. This shall not apply to tallying fish. Overtime rate \$1.25 per hour.

(b) The engineer or launch operator shall be furnished with an official log book. A complete log shall be kept by the operator or engineer of each day's work, in duplicate form. The original copy to be turned in to the official timekeeper and the carbon copy to be retained by engineer or operator. In the event of a dispute the time keeper will refer the matter to the delegate. In the event a satisfactory agreement cannot be reached the dispute will be referred to Section 2, page 1 of this agreement.

(c) All tug and launch boat operators and engineers pertaining to this agreement, their wages shall start seventy-two (72) hours from time of dispatching ship, providing, however, no picket line shall delay the vessels sailing, or cause beyond companies control. Time and date of ships sailing to be noted on Union dispatch card by company agent and signed. In the event ship sails before seventy-two (72) hours elapsed, wages shall start at said sailing date.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(d) Any member laid up through sickness or accident, resulting from employment or environment who is unable to work according to the judgment of a physician, shall be paid all earnings up to the time so laid up, and thereafter be paid his monthly wages, transportation and subsistence, until placed in a hospital in Seattle or San Francisco.

All members while engaged under this agreement shall receive medical and surgical attendance, and medical and surgical necessities on the vessel, excepting venereal diseases.

(e) Each launch shall be furnished with provisions to last at least one week, and when cooks are not provided, an engineer or operator who does his own cooking, shall be compensated at the rate of \$.65 per meal. Dispatch launches shall not be considered as coming under this section.

(f) Launch, dispatch and tug boat operators en-route to and from the fishing grounds shall be quartered two (2) to a stateroom if possible. The rooms are to be serviced once a day, and clean linen is to be supplied once a week. They shall be served meals in the officers mess, and also be served in the officers mess at the canneries. At the canneries when the operators live ashore, they are to be quartered two (2) to a room if possible.

(g) If employer sees fit, engineers, launch and tug board operators who have been in the employment of the Company during the last season shall be given preference of employment and promoted

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

when opportunity presents itself. At employer's option, engineers will have the privilege of going back to jobs on which they served last, provided former employee is in good standing in the Union.

(h) If arrival of any ship in the home port is after 12 o'clock midnight, a full day's pay shall be given.

Section 10. For the purpose of this agreement the home port shall be considered the port where the company's office and terminals are located and articles are signed and terminated.

Section 11. The Union agrees to furnish competent men within the employments covered by this agreement.

Section 12. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

In Witness Whereof, the parties hereto have set their hands and seals this day of May, 1940.

MARINE ENGINEERS' BENE-
FICIAL ASSOCIATION NO-
97, INC.

By

ALASKA SALMON INDUS-
TRY, INC.

By

For Alaska Packers Associa-
tion
Red Salmon Canning Co.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

MARINE COOKS & STEWARDS
SEASON 1940

This Agreement entered into this day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and Marine Cooks and Stewards (herein referred to as the Union),

Witnesseth:

The Union claims jurisdiction in the preparation and serving of food to all crafts, except cannery workers, on all floating equipment and at all canneries, provided that men at pumping stations and on boats and small power scows who have prepared and served their own food in the past may continue to do so. The Company agrees to recognize the Union as representing all members of the Stewards department from the day of hiring at San Francisco until the day of discharge at San Francisco.

The Company agrees to hire all members of the Stewards department through the hiring hall of the Union, and the men shall except as otherwise herein provided be assigned to their specific jobs from the Union hiring hall.

Section 1. It is expressly agreed that neither the Company, Superintendents, nor any agent of the Company, nor any representative of the Union has the power or authority to change any of the provisions of this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 2. The Union in all cases shall judge and determine the qualifications of its members provided that the Company shall not be required to employ unsatisfactory men or men who have quit during previous seasons while in Alaska, and provided further that Chief Stewards and Storekeepers, when employed, may be selected by the Company and shall not be subject to assignment from the Union Hiring Hall.

Section 3. Any member signed up and discharged without valid cause shall be paid one month's salary within 24 hours. The Union and the Company shall jointly determine what constitutes valid cause, and if no agreement is reached, shall be submitted for adjustment or arbitration.

Section 4. No member shall be required to pass through a picket line established by organized labor, nor work where armed guards are used or employed during a dispute; refusal to pass such picket line shall not constitute a violation of this agreement.

Section 5. San Francisco prices shall prevail in the Company Commissaries and cigarettes shall not be sold at more than one dollar and forty cents per carton.

Section 6. Members signing on for one cannery or ship shall not be transferred without the consent of the membership.

Section 7. Standby wages shall be paid at the rate of \$6.50 per day for all men.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 8. The Union is opposed to gambling in any form and the sale and use of dope and the excessive use of intoxicating liquors. Stewards and Delegates will cooperate with the Company in preventing these vices.

Section 9. A committee from the Union shall investigate all ships at least five (5) days prior to sailing and to see that proper working gear is supplied and quarters satisfactorily arranged.

Section 9 (a) Where accommodations will allow in present bunkhouses, spring cots will be installed in place of bunks two high.

Section 10. On board ships and ashore in the canneries, no member shall be required to work or sleep where conditions are such as to be inimical to his health or well-being.

Section 11. The Company agrees to furnish comfortable sleeping quarters ashore including recreation room and adequate bathing and sanitary facilities for the exclusive use of the Stewards department. Where same are not now available they will be provided as soon as possible after arrival.

All windows and doors shall have full screens.

Section 12. When ashore, except in event of conditions beyond control, when heat is not furnished, bathing facilities or proper lighting are lacking, a penalty of one dollar (\$1.00) per day per man shall be imposed until such conditions are properly adjusted. At canneries generators will run until

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

11 P.M. so that lighting will be available until this hour.

Section 13. Where men are sent ashore in Barges, proper shelter shall be provided for all men and their belongings, with sufficient life-preservers for all men on the Barge. Traveling time to and from Cannery and ship shall be considered working time. If members miss a meal while traveling between ship and shore, they shall be paid for such at the agreed rate. Members other than Barge or Lighter Crews shall not be required to travel on same when heavy machinery is being transported. Neither the M. S. Madrono nor the M. S. Kvighak shall be considered as Barges within the meaning of this section.

Section 13a. The Company agrees to send wires to all locations notifying the wintermen to have kitchens and living quarters in livable and sanitary condition for crew to come ashore. Copies of telegrams to be furnished to the Union.

Section 14. Sufficient Steward's working equipment, such as mops and mop buckets with wringers, brooms, dust pans, etc., shall be provided for ship and cannery use.

Section 15. A sanitary man is to be employed for each cannery except at Ugashik to keep toilets and bathing facilities clean in all canneries and on board ships, and to remove garbage from cook-house to dumping grounds. He shall keep grounds clean around the kitchen and mess rooms, and shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

carry coal for kitchen or bunkhouse use, and shall take care of live chickens if taken. The sanitary man shall also make beds and assist janitor if required.

Section 16. Janitors shall be provided to keep stewards' quarters clean (and in all other departments entitled to such service) and shall keep bathing and sanitary facilities in bunkhouses clean and shall make beds. A janitor shall not be required at Ugashik.

Section 17. At no time shall members be required to do any work which rightly belongs to another organized group.

Section 18. Except at Ugashik, no messman shall operate a laundry in addition to his regular work.

Section 19. The Company shall furnish each man with a bedspring, mattress, and pillow, also a white slip and two white sheets to be changed every seven (7) days, and face and bath towels to be furnished twice a week. A spread and two good blankets shall be furnished each man, who will be responsible for same. When linen is not provided on the seventh day, the Delegate shall notify the Chief Steward to this effect and if no change is made on the following day a penalty of one (\$1.00) dollar per man per day will be charged. Face soap of good quality, preferably Palmolive, matches, and laundry soap shall be furnished weekly also.

Section 20. Where Laundryman washes for more

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
than one (1) Cannery, he shall be allowed an Assistant Laundryman.

Section 21. Waiters' coats, aprons and Cooks Butchers' and Bakers working gear, and dish towels shall be washed by the Company Laundry without charge.

Section 21a. Waterproof aprons shall be provided for dishwashers and scullions.

Section 22. The Company shall furnish daily radio dispatches, including uncensored and undiluted labor news, provided that there shall be no obligation to furnish such dispatches or news if to do so requires payment of overtime to any of Company's employees. Victrolas with records shall be placed in recreation rooms.

Section 23. Sufficient members of the different crafts shall be hired at least five days in advance to get ships in condition and see that stores and meat are properly stowed. This does not include tugboats, or M. S. Madrono or Kvighak.

Section 24. A Chief Steward shall be carried on the Etolin, Chirikof and American Star, who shall serve in the same capacity ashore.

Section 25. In all Canneries of four lines or over a storekeeper shall be carried to handle all Steward's stores from warehouse to cookhouse. No Member will be required to handle stores either on or off ship except petty stores, handled by Launch Cooks. In addition to his other duties he shall clean the hams and bacons, and sprout potatoes and onions.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Where storekeeper is not required, scullion shall carry stores to cookhouse. The storekeeper shall carry launch stores to the dock as required, without payment of overtime.

Section 26. Employees shall prepare, serve and clean up after three (3) meals each day, and prepare, serve and clean up after coffee as customary during the day at straight time.

In lieu of overtime for this work men shall be paid the sum of \$150.00 each with the exception of those working while in Alaska, on launches, tugs, bunkscows and power scows.

Saturday afternoon, Sunday and Holiday work will be paid for at double the regular straight time wage except to men working on percentage but this does not include Saturday afternoons and Sundays at sea.

Three Dollars (\$3.00) will be paid to those day men actually engaged in preparing, serving and cleaning up after hot night meals and \$1.50 to those day men actually engaged in preparing, serving and cleaning up after night cold lunches or coffee or both. The Steward shall designate the number of men to be employed.

Section 27. Men working while in Alaska on launches, tugs, power scows and bunkscows will do work before and after such transfer as directed by Steward from time of leaving San Francisco until return without payment of overtime.

Section 28. Men working on launches, tugs,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

power scows and bunkscows to receive in lieu of overtime, except as provided in Section 29 percentage on the total pack of cannery or canneries to which assigned, as follows:

Eight lines	\$1.25 per thousand cases
Seven lines	1.43 per thousand cases
Four lines	2.50 per thousand cases
Two lines	5.00 per thousand cases
One line	10.00 per thousand cases

Section 29. Men working on launches, tugs and power scows will prepare, serve and clean up after three meals and coffee as customary each day and set out cold cuts and coffee before going off duty without payment of overtime.

Hot night lunches are not to be served unless ordered and by written approval of Captain. Three dollars (\$3.00) to be paid for night hot lunches.

Launch, power scow and tug cooks to carry their own stores as directed without payment of overtime.

Section 30. Bunk scow men where there are two shifts shall work on day shift from 6 A.M. to 6 P.M. and on night shift from 6 P.M. to 6 A.M. without payment of overtime.

Bunk scow men where there is one shift shall receive \$25.00 each extra for the season.

Section 31. Power scow or launch cooks if designated to feed fishermen shall receive \$25.00 extra for the season.

Section 32. Laundrymen, janitors, sanitary men and storekeepers, where employed shall receive

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

\$150.00 in lieu of overtime except as provided in Section 35.

Section 33. Night men to work from 7.50 P.M. to 1 A.M. and from 3:30 A.M. to 6 A.M. Night men shall receive \$150.00 extra for the season and overtime as provided in Section 35. Night cooks where no night messman is employed shall serve midnight lunch to firemen and watchmen.

Section 34. Bakers to do all work necessary and their hours of work shall be left to the discretion of the Chief Baker. Bakers shall receive \$150.00 extra for the season in lieu of overtime except as provided in Section 35.

Section 35. Saturday afternoon, Sunday and Holiday work will be paid for at double the regular straight time wage to men covered in Sections 32, 33 and 34 but this does not include Saturday afternoons and Sundays at sea.

Section 36. Sums paid in lieu of overtime, or as a bonus, or as percentage as provided herein shall be paid on a pro rata basis in the event men assigned to jobs to be compensated on these bases are so assigned and at work during portion of season only, and in no event shall both overtime and a bonus or percentage be paid for the same period of employment.

Section 37. On vessels and tugs en route to and from Alaska the meal hours shall be as follows:

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Breakfast	7.30 a.m. to 8.30 a.m.
Dinner	11:30 a.m. to 12:30 p.m.
Supper	5.00 p.m. to 6:00 p.m.

The meal hours at the canneries and on vessels and floating equipment while in Alaska shall be as follows:

Breakfast	7.30 a.m. to 8.30 a.m.
Dinner	12:00 noon to 1:00 p.m.
Supper	5.00 p.m. to 6:00 p.m.

The Company shall require that meal hours be observed, and that if any meals are required to be served to any person (except members of the Steward's department) who arrives for meals after the hours above set forth, overtime will be paid for time actually engaged in serving and clearing up after such person. Such person shall be served, however, only upon written authority from the Superintendent or his authorized agent.

Section 38. When food and lodging is not available, meal and lodging money shall be paid as follows:

Breakfast	\$1.00
Lunch	1.00
Dinner	1.00
Room rent	2.00

Section 39. The Company agrees to recognize the Union Delegate on board ships and in Canneries.

Section 39 (a). Any overtime claims shall be acknowledged in writing by the Company representatives in charge, whether on vessels or tugs in the can-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

neries, and in addition shall be acknowledged by the Chief Steward, where carried. Such acknowledgment shall state whether or not the work was actually performed. If there is any question or dispute concerning whether or not such work constitutes overtime under the provisions of this agreement, such acknowledgment shall not bind the Company to pay overtime, but shall be binding only as to the fact of the performance of the work. Disputed overtime shall be taken up directly by the Union with the Company for adjustment, and there shall be no stoppage of work pending adjustment. The Company agrees that acknowledgment of overtime claims as above provided shall be made promptly, and at specified times to be agreed upon by the delegates and the Company representative in charge.

Section 40. The following days shall be observed as holidays: Memorial Day (May 30th), Independence Day (July 4th), Labor Day (first Monday in September).

Section 41. When overtime is less than one hour, one hour shall be paid. The overtime rate shall be \$1.00 per hour. The straight time hourly rate shall be $1/240$ of the monthly compensation hereinafter set forth.

Section 42. Messman shall prepare and serve coffee when coffee is not made on range or when cook is not on duty.

Section 43. The Company will engage the same number of messmen for the respective canneries as

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

was engaged for each such cannery in 1939, provided that the same number of men are employed there in 1940.

Section 44. Messmen shall be required to do any scullion's work except on tally-scows, launches, tugs and pile drivers, and on the M.S. Kvichak and M.S. Madrono.

Section 45. Port Steward's instructions to members of the Stewards Department shall be transmitted through the Chief Steward.

Section 46. All pots, pans and dishes shall be washed in separate sinks in the canneries.

Section 47. All sinks shall be constructed of galvanized steel or shall be metal lined.

Section 48. Launch cooks staying ashore in excess of three (3) weeks shall receive second cook's wages only for the time actually spent ashore.

Section 49. Where bakers bake bread for the stores they shall be paid 7½¢ per loaf.

Section 50. When a member is incapacitated through drunkenness in cannery or on ship the Union delegate, with the Steward or Superintendent, shall deduct his wages from payroll at the rate of two (2) days for each day so incapacitated, the man or men doing his work to receive the amount deducted in lieu of overtime.

Section 51. When a member is in the judgment of a qualified physician incapacitated (meaning sickness through no fault of his own), the man or men doing his work shall be paid the same wage he re-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ceived, provided that under such circumstances no member's wages shall be reduced.

Section 52. Where members are required to submit to physical examination, same shall be done in a dignified manner with regard to the method employed. All physicians and surgeons shall be licensed practitioners. When members are rejected, the Union reserves the right to furnish doctors for re-examination. In addition to the Medical Officers, the Company shall provide a sufficient number of First Aid Attendants and also First Aid and Medical Chests. No fees of any kind shall be charged by the Company or its Medical Staff for services to any member except for social disease and injuries resulting from drunkenness. Where members require surgical attention they shall be transported to the nearest hospital.

Section 53. Sufficient help shall be hired in San Francisco so that it will not be necessary to hire natives for the Stewards' Department except natives to wait on natives.

Section 54. Wages shall start forty-eight (48) hours after signing articles providing, however, that if ship sails prior to the termination of said forty-eight hours (48) hours, wages shall start as of date of sailing.

Section 55. When launches are taken from San Francisco to Alaska or Alaska to San Francisco under their own power, their own power, the run money shall be negotiated.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 56. Ship's cook shall receive one (1) hour overtime when meats are taken from ship's ice-box for cannery use if he supervises this work.

Section 57. All meals shall be served on crockery ware and satisfactory table gear shall be provided.

Section 57. Upon completion of the season's work and the day before actual arrival of vessel at point of discharge, the men shall be given an advance of Ten Dollars (\$10.00). In no case shall members be compelled to wait more than forty-eight (48) hours to be paid off in full, except on Sundays and bank holidays. If for any reason, members are forced to wait more than forty-eight (48) hours for their full wages, they shall be paid at their regular rate for each day that they are compelled to wait, except Sundays and bank holidays. This shall not apply to compensation which is in dispute.

Section 59. A work schedule with the assignment of each employee in the Stewards' Department as to hours and duties shall be prepared and posted by the Chief Steward within twenty-four (24) hours after sailing, and in the canneries a work schedule shall be prepared and posted by the Chief Steward within twenty-four (24) hours after arrival.

Copies to be furnished to the delegate on the ships and in the canneries as soon as they are prepared for posting.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Schedule can be changed if found necessary by the Chief Steward.

Section 60. The Union agrees to furnish competent men within the employment covered by this agreement.

Section 61. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section 62. The following wage scale shall apply to Bristol Bay:

Chief Steward	\$200.00
Chief Cook	165.00
Ship's Cook	165.00
Second Cook	140.00
Night Cook	140.00
Blue Room Cook.....	140.00
Launch Cook	115.00
Cook and Steward (Tug Boats Only).....	165.00
Butcher	140.00
Chief Baker	165.00
Second Baker	140.00
Scullion	90.00
Dishwasher	87.50
Straight Laundryman	105.00
Assistant Laundryman	82.50
Messmen	82.50
Sanitaryman	82.50
Janitor	82.50
Storekeeper	120.00

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 63. With respect to the Manning Scale and Working Schedule for Diamond "P" Cannery, the Red Salmon Canning Co. proposes to take:

One (1) Chief Cook.

One (1) Second Cook—who remains on the American Star during discharging and loading and is ashore during the fishing season.

One (1) Night Cook—both on the American Star and ashore.

One (1) Ship's Cook—who remains on the American Star the full time.

Four (4) Launch Cooks—for Power Scows.

One (1) Launch Cook—for the Leader who acts as Scullion on American Star during period of discharging and again during the period of loading, for additional pay of \$10.00 per month for the season.

One (1) Baker.

One (1) Second Baker.

One (1) Scullion.

One (1) Messman—who serves on the Fram as Launch Cook during the fishing season and receives the rate of \$115.00 per month for the fishing season—or on board the Fram as Cook.

One (1) Messman—who takes care of the Petty Officer's Mess on the American Star and remains on board the American Star during the full time in Alaska, and for the additional payment of \$10.00 per month for the season, makes beds, cleans the

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

rooms and washes the dishes for this mess and the men concerned.

Two (2) Messmen—who act as Messmen on board the American Star during the discharging and loading periods and receive \$5.00 per month for the season extra for washing dishes during the time on the American Star discharging and loading.

One (1) Messman—who dishes up for the saloon on the ship and washes dishes for the saloon and who washes dishes while waiting on the Blue Room ashore, to receive \$10.00 per month additional for the season.

One (1) Messman—who goes on tally scow during the fishing season.

One (1) Messman who acts as night Messman on the ship and goes to the Fishermen's mess ashore.

Two (2) Straight Messmen—who wait on Mechanics' Mess on ship and ashore.

One (1) Dishwasher.

One (1) Sanitary Man.

One (1) Janitor.

One (1) Laundryman.

One (1) Second Cook and Baker—who goes up on the Madrono,—goes to Diamond P Cannery—goes on the Tally Scows during fishing season,—back to Diamond P and returns on the Madrono.

One (1) Launch Cook—who goes up on the Madrono,—goes to the Pelican,—Diamond P Cannery and acts as Second Cook on Pelican during fish-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
ing season—stays on the Pelican during loading and returns on the Madrono.

One (1) Messman—who goes up on the Madrono,—does to Diamond P, and returns on the Madrono—who washes dishes, takes care of rooms and makes bed for the few men concerned.

This makes a total of twenty-eight (28) men for Diamond P.

For Ugashik (F)

One (1) Second Cook—who goes up on the American Star—goes to Ugashik and during the fishing season, may act as Cook on the Power Scow, or as Tally Scow Cook.

One (1) Baker—who goes up on the American Star, goes to Ugashik, remains there until he returns on the American Star, who also is to make 9:00 p.m. coffee only at Ugashik at night.

One (1) Scullion—who goes up on the American Star, goes to Ugashik, remains there and returns on the American Star.

One (1) Messman—who goes on the American Star, goes to Ugashik during the entire season and returns on the American Star.

One (1) Messman—who goes on the American Star, waits on table in the saloon—goes to Ugashik for the entire season and returns on the American Star, doing the same work, who does laundry at Ugashik on overtime.

One (1) Dishwasher—who goes up on the American Star—goes to Ugashik for the full season and returns on the American Star.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

One (1) Steward and Cook—who goes on the Madrono and who is Steward and Cook at Ugashik, and returns on the Madrono.

One (1) Second Cook—who remains on the Madrono during the entire season as Cook.

One (1) Messman who goes on the Madrono and washes dishes and makes beds while on the Madrono and stays on the Madrono all season.

One (1) Messman—who goes on the Madrono—goes to Ugashik, handles the Blue-Room and Mechanics' Mess, washes dishes and helps make beds on the Madrono and ashore at Ugashik—takes care of the rooms and makes beds where necessary, for the additional sum of \$10.00 per month for the season.

Total of ten (10) men for Ugashik .

Section 64. It is understood that during the fishing season, Messmen employed on the Bunk Scows may be brought to the canneries on Saturday nights if desired, to assist in waiting on fishermen.

Section 65. The work involved on the trip of the Madrono to Alaska and return, is well understood by your Committee and it is agreed that the Madrono shall carry the same number of men in the Stewards' Department as in 1938, with the exception that the Madrono Cook shall be signed as Second Cook and all work shall be performed regardless of rating and for wages specified in Ship Articles, to including making up rooms and beds of those who are entitled to such service, washing

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

dishes and pots and preparing vegetables, and when such skeleton crew goes ashore in Alaska, to continue to perform all such work of the Stewards' Department until arrival of a full crew carried on the American Star, at which time men will do only such work as called for under their ratings. The Messmen left aboard the Madrono and American Star also to wash dishes, and make beds and care for rooms of the few men requiring such services, to be signed as ship Messmen.

Section 66. Any limitation of hours that may be applicable under the Federal Fair Labor Standards Act shall be applied in operating under this agreement.

ALASKA SALMON INDUS-
TRY, INC.

By
For ALASKA PACKERS ASSOCIA-
TION
RED SALMON CANNING
CO.

MARINE COOKS' AND STEW-
ARDS' ASSOCIATION OF
THE PACIFIC-C I O.

By

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

April 19, 1940.

Alaska Fishermen' Union

49 Clay Street

San Francisco, California

Gentlemen:

In accordance with our discussion yesterday we submit the following to you as our proposal for the 1940 season at Bristol Bay.

We desire to establish certain uniform conditions in all contracts covering the Bristol Bay operation, and for this purpose propose the following:

1. All contracts shall expire on January 1st, and should be automatically extended thereafter from year to year unless on or before the preceding first of December, either party notifies the other party of termination of the contract or requests re-negotiation for the following year.

2. The employer shall not be liable for any penalties if the condition upon which they depend has been brought about directly by a labor dispute involving job action not based on a violation of contract by the employer.

3. There shall be no obligation on the part of the employer to continue employment if vessels are disposed of or chartered or if the expedition is abandoned.

4. The employer shall have the right to select the supervisory employees, with the understanding that such employees may be members of any craft

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
now having bargaining relationships with the employer.

To provide for the 1940 season at Bristol Bay only, we propose to you, in addition to the foregoing, the 1939 contract of the Alaska Packers Association with the following modifications:

1. Section 5 (b) shall be changed to read:

"If vessels call for cargo or personnel at any intermediate port or cannery in Alaska, other than on Bristol Bay, on the home voyage, men not on monthly wages shall receive, in addition to full run money and all other earnings, coasting rates from date of arrival until date of departure, both dates included. Men handling cargo shall each receive One Dollar extra per hour in addition. If calls are made at more than one port or cannery, other than in Bristol Bay, the payment of coasting rates shall continue until date of leaving the last port of call."

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2. Section 5 (d) shall be changed to read:

"Any man signing this agreement and discharged without his consent before sailing shall receive Seventy Five Dollars as full compensation, to be paid within forty eight hours after such discharge, provided that this section shall not apply in the event that the expedition for which the man has been engaged is unable to sail because of a labor dispute."

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

3. Section 12 shall be changed to read:

“Sec. 12. Boat crew having swamped their boat shall assist in salvaging their own equipment, provided, however, if detained from fishing more than three hours after having reported themselves at the cannery to the superintendent or whoever may be in charge, or six hours if having reported themselves elsewhere to an authorized person of the same company (authorized persons herein referred to, to mean any of the company's tally-men in charge or captain of launches), they shall be put to work until such time as boat is provided, and for which work they shall be paid average, or the limit, as the case may be. This rule shall also apply to boat crew requiring repairs on their boat.”

4. Section 13 (d) shall be changed to read:

“Any other seaman, fisherman or trapman who has signed for monthly wages and percentages and who is laid up through sickness or natural ailments, and is unable to work according to the judgment of a physician, shall be paid his monthly wages and all other earnings up to the date so laid up, and shall thereafter be paid his respective monthly wages until placed in a hospital in San Francisco, Seattle, or Astoria, or if resident fisherman, in the nearest hospital. In the event of dispute, the Superintendent will make effort to secure the opinion of another qualified physician.”

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

5. Section 15 (a) shall be changed to read:

“Sec. 15. The employer through its superintendent or agent in charge may at any time discharge any party of the second part for refusal to perform work, or for any other just cause, and his wages shall cease at the date of such discharge.”

6. The second paragraph of Section 16 of the 1939 contract shall be deleted. This paragraph now reads:

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“The delegate, on request shall be furnished with a copy of the diagnosis in regard to any accident, injury, or illness to any member, and said member or any person designated by him shall be permitted to examine all medical or other reports in regard to any accident, injury or illness pertaining to him.”

7. The second paragraph of Section 22 shall be changed to read:

“Coffee shall be served at the ships and cannery to all hands at 3 p.m. and at 9 p.m. if working. After 9 p.m. fishermen must serve themselves.”

8. It is desired to make a separate contract for beachmen and net tenders, in which will be placed all relevant provisions of the 1939 contract as modified herein.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

9. With regard to the price per fish as set forth in Section 4, each gill-net fisherman shall receive in addition to the other moneys therein mentioned, the sum of six cents for each Red or Cono salmon, instead of the sum of Seven and One-Eighth cents as provided in 1939, with proportionate reductions to be made in the price to be paid for all other varieties of fish.

10. With regard to the sums paid on cases of salmon as set forth in section 4, the same proportionate reduction will be made from the sums paid in 1939 as set forth above with reference to the price per fish.

11. The matter of compensation for net tenders we desire to leave open for further discussion.

We are sending to you, in answer to your request, written replies of Alaska Packers Association, Alaska Salmon Company, and Red Salmon Canning Company, to your communications regarding improvements at the respective canneries. These are submitted to you with the understanding that they are not to be taken as representations that there will or will not be expeditions to Bristol Bay this year, or that the specific canneries therein mentioned will or will not be operated. With this understanding, the operators have authorized us to state to you that the improvements and changes

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
agreed to be completed will be done during 1940,
labor relations and the weather permitting.

Yours truly,

ALASKA SALMON INDUS-
TRY, INC.

By J. PAUL ST. SURE.

JPS/OB

PACKERS PROPOSAL 1940

Agreement

This Agreement, entered into this.....day
of May, 1940, between Alaska Salmon Industry,
Inc. (for Alaska Packers Association and Red Sal-
mon Canning Co., each herein referred to as the
Company), and International Association of Ma-
chinists, San Francisco Lodge No. 68 and East Bay
Union of Machinists (each herein referred to as the
Union) and each of the men signing hereto in the
capacity of cannery Foremen, Machinists, Iron
Chink Men, Seamer Men, Refor Men, Filler Men,
Combination Men, Salmon Cooks, Utility Mechanics,
and Mechanical or General Helpers, who work in
the salmon canneries in Alaska,

Witnesseth:

Section 1. The parties of the second part hereby
engage in the services of said company and promise
for the consideration hereinafter mentioned, to work
according to the lawful orders of the Superintend-
ent, or whomever may be in charge during the time
they shall remain in the employ of said company

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

in the capacity under which they have signed this agreement. Also to repair and maintain all machinery and mechanical equipment on boats, lighters and vessels and to operate, repair and maintain all machinery and mechanical equipment in the canneries to which they may be assigned according to the terms of this agreement and for the compensation herein provided in accordance with the classification herein provided, which shall be the terms of employment and the schedule of compensation for the 1940 season.

Section 2. At least one week before sailing, the company shall furnish the representative of the Association as complete a list as possible of the crew coming under the jurisdiction of the Union.

Section 3. All employees hired at the port of embarkation under this agreement shall be members in the Union. The Union recognizes that the Company will hire men in Alaska and agree to furnish such men if available. Bona fide residents of Alaska shall be given preference.

Section 4. The Company shall agree to pay the following rates of pay to the various classifications of employees who shall be members of the Union.

Section 5. The following are the rates of pay for the 1940 season.

BRISTOL BAY

Maximum Season, 3 Months 10 Days.

Foreman, 3 or more lines.....\$2,300.00

Foreman, 2 lines..... 2,200.00

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Foreman, one line cannery which does not employ first machinist.....	2,000.00
Foreman, one line cannery which employs first machinist	1,800.00
First Machinist	1,200.00
Second Machinist	850.00
Shop Machinist	850.00
Iron Chink Man (2 chinks or more).....	750.00
Iron Chink Man (1 chink).....	600.00

An Iron Chink Man, in order to be under this classification, must be a Machinist of sufficient experience to do all his own repair work on Iron Chinks. If unable to perform such work he will be under the lower pay bracket, regardless of the number of machines in the Cannery. The number of Iron Chinks regularly operated during the season shall be used as the basis for determining the rate of compensation.

Fillerman, Seaman, Reformerman, Combination Man, New Automatic Labeling and Casing Machine Operator	\$ 600.00
Salmon Cook	500.00
Mechanical Helper	400.00

If men are required to work longer than the time stipulated for the District in which they are working, they shall receive additional compensation over and above the amount fixed for their class of work for such stipulated period, the same to be computed and paid at a daily rate equal to the total amount of the agreed pay for the stipulated period divided by the number of days in such stipulated period. This shall not apply to Cannery Foremen,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

whose season shall be as has been customary in the past.

Section 6. Nothing herein shall preclude the payment of higher rate at the discretion of the employer, and no one shall be discriminated against for his Union activities.

Section 7. Hours of work during Canning Season: Eight (8) hours in a spread of any nine (9) consecutive hours shall constitute a day's work, computed from midnight to midnight. Six days shall constitute a regular week's work and the Company may elect which day shall be the day of rest. The foregoing limitations shall not apply to Foreman. The Cannery Superintendent shall determine the beginning and ending of the Canning Season. When an employee has terminated a shift, he shall not be required to start work again until a four (4) hours rest period has elapsed, unless he receives overtime pay, provided that employee shall put in eight consecutive hours of work in a spread of nine (9) hours at straight time in every twenty-four (24) hours from midnight to midnight.

Section 8. Hours of work Before and After Canning Season: Eight (8) hours shall constitute a day's work between the hours of 8 A. M. and 5 P. M. with one hour lunch period to be reached by mutual agreement.

Section 9. Overtime and Holidays: Any time worked in excess of the regular eight (8) hours within a twenty-four (24) hour period, midnight

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
to midnight, and any time worked on the day of rest which shall have been designated pursuant to the preceding paragraph, shall constitute overtime and shall be paid for at the following rates:—

OVERTIME RATES FOR ANY CANNERY

Section 10. The rates of overtime compensation shall be as follows:—

	First 150 hours per hour	Balance of hours per hour
First and Second Machinist—(Shop Machinist)	\$1.25	\$1.50
Iron Chink Man, Filler Man, Seamer Man, Reformer Man, Combination Man, New Automatic, Labeling and Casing Machine Operator92½	1.00
Salmon Cook, Mechanical Helper.....	.72½	.75

Iron Chink Man receiving the higher rate of pay, shall receive overtime at the rate of \$1.25 and \$1.50 per hour, for the respective hours.

Section 11. The following are legal holidays: Decoration Day, Independence Day and Labor Day. All work performed on above holidays to be paid for at overtime rates. When holidays fall on the day of rest, the following day shall be observed.

Section 12. Employees must have their working time entered and approved daily in their time books by the bookkeeper or foreman. Employee shall receive a complete statement of season's earnings within forty-eight (48) hours after arrival at home port. In the event that the service of an employee is

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

not satisfactory, barring him from re-employment with the Company the following season, the Company shall so notify the employee through the Union and furnish the Local with a copy of same not later than December First.

Section 13. If, for the principal part of the season any employee shall be assigned to any employment carrying with it a higher rate of wage than that for which he was originally employed, such higher rate of wage shall apply to his entire employment under this agreement and appropriate adjustment shall be made accordingly when employee is paid off. Provided, however, that if such change of employment is due to the injury, sickness, death, incapacity, change of employment, quitting or discharge of another employee, then any increased rate of pay shall apply only from the time employee is advanced. Any employee unable to satisfactorily fill the position for which hired or to which he has been transferred, may be transferred to a position with a lower rate of pay if reasons are furnished to the delegate. In such case he shall receive the higher rate only during the period so employed. The Company agrees to sign the men on in their various capacities before leaving port of embarkation. It is mutually agreed that members of the Union, when employed in salmon canneries shall be permitted by said Union to work at various and sundry jobs within a salmon cannery during the actual canning season.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 14. During the operation of the cannery, provision shall be made to keep the general crew quarters ashore clean, make fires when necessary and to keep said quarters in a sanitary condition. All canneries shall have good, clean shower baths and laundry room and all men shall be furnished a good cotton mattress and spring. Laundry soap and washing powder shall be furnished.

Section 15. When men are required to work where oil skins and boots are necessary, the same shall be furnished by the Company free of charge and the same shall be returned to the Company at the close of the season at the discretion of the Superintendent.

Section 16. One hour shall be allowed for all regular meals except during the height of the canning season. The limits of meal hours shall be: Breakfast, 6 to 8 A. M.; Dinner, 11 A. M. to 1 P. M.; Supper, 5 to 7 P. M., except where mutually agreed. Men at the cannery required to work until midnight shall receive hot coffee and lunch. Men who continue to work after midnight shall receive hot meal at the mess house.

Section 17. Men shall be privileged to stop work for 10 minutes for coffee at the customary hours prevailing at the cannery.

Section 18. The Company agrees to recognize one employee at each cannery, designated by the members of this Union at such cannery, to act as the delegate and representative of this Union, whose

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

duty in addition to his regular prescribed duties as an employee, shall be to see that the members of this Union in that cannery observe the agreement and at the same time that the rights and interests of such members under the agreement are protected.

Section 19. No employee shall be required to be alone in a cannery to do repair work.

Section 20. Any employee covered by this agreement, who from injury sustained while at work for the company, through no fault of his own is prevented from working according to the judgment of a physician, is to continue to receive his respective pay according to this agreement during the period of the injury. Provided, however, that in the event the injury to any employee comes within the purview of the Workmen's Compensation Act for the Territory of Alaska, or any other Compensation Act, Territorial Federal or State, the Company will pay the benefits specified in such applicable compensation act, and in addition thereto, such amount as will equal the difference between the compensation paid and the pay of such employee according to this agreement. Provided, further, that if the disability continues beyond the termination of the season he shall receive thereafter only the amount to which he would be entitled under the Workmen's Compensation Act for the Territory of Alaska, or any other compensation act applicable to his employment. Employees, if and when injured, shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

report such injuries to the foreman in charge immediately at the time of the injury. Any such employee shall be entitled to medical and surgical attention and necessities without cost, in accordance with the requirements of the Workmen's Compensation Act for the Territory of Alaska, or any other compensation act applicable to his employment.

Section 21. Any employee covered by this agreement who is laid up because of sickness, or natural ailments or an injury sustained outside the scope of his employment, and who is unable to work according to the judgment of a physician, shall be paid his monthly wages and all other earnings up to the date so laid up, and shall thereafter be paid only the sum of \$50.00 per month from the date so laid up until able to work, or until placed in a hospital, or until transported to a place where hospital facilities are available, at which time the Company's liability shall cease. If, however, it is necessary for the Company to guarantee hospital expenses, etc., in order to place employee in hospital, such expenses shall be borne by the employee. It shall be, however, the thorough understanding that in the case of sickness or natural ailments, or an injury sustained outside of the scope of his employment, that the Company will not be liable for wages after the date the majority of the employees of such cannery have arrived at the port of embarkation. In the event of a dispute, the Superintendent will also make an effort to secure the opinion of another qual-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ified physician. All employees so laid up through sickness, or natural ailments while engaged under this contract, shall receive medical and surgical attention and necessities without charge so long as they shall be entitled to payment of the \$50.00 per month under the terms of this section. Provided, however, that in the event an employee contracts or suffers from a venereal disease, he shall be entitled to no compensation during the period he is unable to work, and the Company shall be under no obligation to furnish such employee medical attention or hospitalization.

Section 22. Should it be necessary to replace any man covered by this agreement during the season because of death, injury, sickness, quitting or discharge of another employee as referred to in Sections 31 and 32, the provision as to the guarantee period of employment are not to apply, and payment shall be made to such replacements only for the period employed based on the proportionate part of the season as defined herein.

Section 23. It is agreed that there shall be no gambling and no excess quantity of liquor shall be taken or sent aboard any vessel or any other Company property.

Section 24. It is expressly agreed that neither the Superintendent in charge, nor any other agent of the employees, nor of the Machinists' Union has the power or authority to change the provisions of this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 25. School, Poll, Social Security, or other taxes assessed against employees for compensation insurance or hospitalization authorized by any Federal, State or Territorial law, shall be deducted by the employer from any wages due, and the employer shall withhold any payments when required to do so by writ of garnishment or legal proceedings, or by valid assignment.

Section 26. It is understood that before embarking, each employee shall submit at such time and place as the Company shall designate, to a medical examination. If any employee shall fail to pass such examination satisfactorily this contract shall be null and void so far as such employee is concerned.

Section 27. Whenever men employed under this agreement are asked to do longshore work they shall do so at the rate of 80 cents per hour.

Section 28. The employees party to this agreement shall not refuse to go through a picket line, unless such picket line is officially recognized by the Union. Employees refusing to go through a picket line shall receive no pay or compensation while work is suspended, and shall pay the Company board at the rate of \$1.00 per day if furnished.

Section 29. This agreement shall not apply to canneries whose original outfitting for the season is based on 10,000 cases or less. The number of cases shall be computed upon the basis of a case of 48 pound talls or the equivalent.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 30. All men to be furnished adequate transportation or transportation on a cannery vessel which shall be considered adequate, provided that there shall be a regular bunk for every person aboard. Steerage transportation on regular passenger steamers shall not be considered adequate for men covered by this agreement.

Section 31. The Company, through its Superintendent or agent in charge, at any time may discharge any employee covered by this agreement for refusal to perform work, or for any other just cause, and his wages shall cease at the date of such discharge, and such discharged employee shall receive a pro rata part of his seasonal rate. However, if any employee is found to have been arbitrarily discharged, he shall be paid the wages he would have normally earned during the period lost by reason of such wrongful discharge, plus \$1.00 per day for board, provided such employee paid board and was not otherwise employed during such period; all subject to adjustment by reason of wages such employee earned from time of dismissal.

Section 32. Any employee who quits shall be paid all wages and overtime up to date of quitting, but shall not be furnished return transportation to port of embarkation.

Section 33. Men discharged shall be given free transportation to port of embarkation, including maintenance.

Section 34. There shall be no strikes, lockouts

('Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

or stoppages of work during the period of this agreement for any cause by any employee, group of employees or the Union. Any disputes that cannot be settled at cannery are to be adjusted and settled after the season at port of embarkation of the expedition.

Section 35. Neither the Machinists' Union nor the employees covered by this agreement shall interfere with the performance of work outside the general scope of this agreement, provided such work is customary in the salmon industry in the particular locality, and is arranged for with the other employees by the employer on mutually satisfactory terms and conditions, nor shall the Machinists' Union nor the employees covered by this agreement interfere with the performance of work by other employees, provided it is customary in particular localities to employ other employees to do such work.

Section 36. When emergency requires, work necessary for safety of vessel or any other Company property shall be done at any time and without extra compensation.

Section 37. For the homeward voyage the Company is to have the right to transfer men from one vessel to another.

Section 38. Men transferred to work at another cannery shall receive in addition to all monies then earned, wages and working conditions prevailing at the cannery to which they are transferred in similar positions.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 39. Men may be transferred from one cannery or district to another where that is agreed to at the time of signing this agreement or during the fishing season. Such men shall receive the prevailing wage for the time spent in each cannery or district, and an agreed proportion of the percentage based on the proportion of the season worked in each cannery or district, and they shall have the same working conditions as those prevailing under the agreement of the district containing the cannery to which they are transferred in similar positions.

Section 40. In the event the cannery is destroyed or so greatly damaged from any cause, or the laws, rules or regulations with reference to salmon fishing or canning be changed, or that in the Company's judgment, because of strikes or for any reason, it would be impossible or unprofitable to continue operations, the Company may terminate this agreement excepting that the Company shall return each employee covered by this agreement to point where hired, at its expense and pay him until such return, unless employee should elect to remain in Alaska, in which event his employment shall terminate at the Cannery.

Section 41. The parties hereto, hereby waive the provisions of Chapter 45 of the Session Laws of the Territory of Alaska for the year 1925 and all amendments thereof and Acts supplemental thereto, and agree that the payment of wages and other compensation referred to in this contract shall be

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

in accordance with the provisions of this agreement and without regard to the requirements of said Act.

Section 42. This contract is entered into subject to all present and future laws, rules and regulations which may be prescribed by the Government of the United States, the Secretary of Commerce, or other governmental authorities exercising jurisdiction; and if, at any time any of the provisions of this contract shall be contrary to any such laws, rules and regulations, then said provisions are, so far as they conflict with such rules and regulations to be considered abrogated and not binding on either of the parties hereto.

Section 43. There shall be no obligation on the part of the Company to furnish radio press or other news service if to do so would require payment of overtime to any of the Company's employees.

Section 44. There shall be no obligation on the part of the Company to continue any employment or compensation hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered, or otherwise disposed of, and in case of such termination of employment the seasonal compensation hereinabove provided for shall be pro rated as of the date employment ceases.

Section 45. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its renegotiation.

Section 46. The Union agrees to furnish competent men within employments covered by this agreement.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, SAN FRANCISCO LODGE
No. 68

By.....

EAST BAY UNION OF MACHINISTS

By.....

ALASKA SALMON INDUS-
TRY, INC.

By.....

For:

ALASKA PACKERS ASSOCIA-
TION

RED SALMON CANNING CO.

PACKERS PROPOSAL 1940

Masters Mates & Pilots

Agreement

This Agreement entered into this day of May, 1940, by and between Alaska Salmon Industry, Inc. (for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Co., each herein referred to as the Company), and Na-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

tional Organization of Masters, Mates & Pilots of America, herein referred to as the Association and the Union,

Witnesseth:

Whereas, the Party of the First Part has been recognized by the Party of the Second Part as the representative of their licensed employees in the Deck Department of their respective vessels for collective bargaining, and the parties hereto have carried on collective bargaining for the purpose of making an agreement fixing hours, wages and working conditions.

Now, Therefore, the parties hereto agree as follows:

Section One. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this agreement or requests its re-negotiation.

Preference of employment for all licensed deck officers shall be given members of West Coast Local No. 90, National Organization of Masters, Mates and Pilots of America in filling vacancies when available, provided that they are qualified to fill such position. The employer shall have the right to pick his own employee, provided, such employee is a member of the National Organization of Mas-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ters, Mates and Pilots of America in good standing, and shall register and be cleared through the offices of West Coast Local No. 90.

Section Two. All disputes relating to this agreement or its interpretation shall be determined by a Licensed Personnel Board, consisting of two persons appointed by the Party of the First Part and two persons appointed by the Party of the Second Part. The parties shall submit such dispute to decision by such board and they agree to be bound by such decision. In the event that said Board shall not agree, an additional member shall be appointed by them, whose decision shall be final. Should the Board fail to agree on appointment of additional member, the Secretary of Labor shall be requested to appoint one agreeable to both parties.

Upon a written notice from any party hereto, stating the purpose of the meeting, the Board shall meet within twenty-four (24) hours. However, no licensed deck officer shall be required to work under conditions which are inimical to his personal safety and health. No licensed deck officer shall be required to work within or pass through picket lines established by any recognized labor union whose members are employed by the Company. The refusal of any licensed deck officer to work under the conditions described in this section shall not be considered a violation of this agreement.

Section Three. Authorized representatives of the Party of the First Part shall have the right to go

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

on board ships of the Party of the Second Part at all reasonable times, at all ports, for the purpose of consulting with deck officers employed thereon.

Section Four. National Organization of Masters, Mates and Pilots of America, West Coast Local No. 90, San Francisco Headquarters, agrees to aid the Party of the Second Part in every way to maintain the highest possible calibre of licensed personnel employed in the Deck Department of all the vessels covered by this agreement.

Section Five. Any master, mate or pilot covered by this agreement, receiving a higher monthly wage than the minimum specified herein shall continue to receive the same during the life of this agreement.

Section Six. Vessels shall be considered in commission from the day of starting loading until the day vessels are returned to the laying-up grounds at the end of the season, both days inclusive.

This clause applies when vessels actually leave winter quarters and start in loading and proceed to sail for Alaska. Periodic loading during the lay up period shall not apply.

When in commission, a full complement of Mates shall be employed on each vessel. If this is not complied with, those officers who subsequently man the vessel shall be paid wages, subsistence and room money from the date vessel leaves winter quarters or their predecessors left the ship. No licensed officer shall be laid off while the ship is in commission.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section Seven. During the first fifteen (15) days of a period at idle status the licensed officers shall be kept at full pay and subsistence, thereafter at monthly pay only.

“Idle status” for the purpose of this agreement shall mean a period of temporary lay-up between voyages at the company's yard and shall be reckoned from the time cargo has been discharged until the vessel begins to load again or proceeds to sea again on her next voyage excepting upon unusual curtailment of the fishing season.

Section Eight. When vessels are in commission and meals are not furnished, Masters and Mates shall each be paid subsistence of Three Dollars (\$3.00) per day, (\$1.00 per meal). If rooms are not in proper condition, such as beds not made up, no heat or light, additional allowance of \$2.00 per night shall be paid each officer.

Section Nine. The members of the Association employed as licensed officers, shall at all times carry on their duties in the interest of and in accordance with the lawful requirements of the company, subject to the terms and provisions of this agreement. No Licensed Officer shall be dismissed except for cause to be stated in a written statement to the Association. An officer so dismissed shall have the privilege to place his case before the Personnel Board and the decision of the Board shall pass final judgment. At termination of fishing season the Employer to notify Local No. 90 in writing

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
of the members who they do not wish to employ. There shall be no discrimination against any man for union activity.

Section Ten. The following days shall be observed as holidays in ports other than Bering Sea: All Sundays and Saturday afternoons, New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, July 4th, Labor Day, Armistice Day, Thanksgiving Day, Christmas Day and all other holidays observed in the Port the vessel may be in when in the United States of America. When any of the foregoing holidays fall on a Sunday, the following Monday shall be observed as a holiday.

Section Eleven. When sent from one ship to another or from one port to another in the course of employment, officers shall be paid their regular wages and expenses incurred in traveling. All transportation shall be first-class and include berth and meals while traveling. If subsistence is not included with transportation, subsistence allowance at the rate of \$3.75 per day shall be paid. While ashore and no living quarters are provided, room allowance at the rate of \$2.00 per day shall be paid.

Section Twelve. If, prior to the completion of the shipping articles, the vessel is withdrawn from service for any cause, Licensed Deck Officers shall be provided with return transportation and subsistence as provided in Section #11, to the port where articles were signed, unless another port is designated in the articles. Full wages shall be paid up to the time of arrival at such port.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section Thirteen. Sea-watches shall be set at noon on days of sailing and shall continue until vessel arrives at next port. If the stay in port is less than 24 hours sea watches shall not be broken. When necessary to anchor, regular watches may be maintained at the discretion of the Master. Four hours shall constitute a sea-watch. Two such watches shall constitute a day's work.

Section Fourteen. For the safety of those on board, mates on watch while at sea, shall do no other work than regular watch duties.

Section Fifteen. At sea, all work in excess of eight hours, reckoned from midnight to midnight, overtime shall be paid. When sea watches are maintained, at sea or in port, Mates shall be paid overtime if called from watch below. No overtime shall be paid for work done for the safety of the passengers, crew or vessel, or for the safety of the equipment and cargo provided same shall have been properly secured and stowed before the vessel leaves the dock for sea.

Section Sixteen. While vessels are in commission the work of licensed deck officers shall consist of such work as is necessary for the safe navigation of the vessel and the supervision of loading, discharging and fueling operations and the supervision of other work performed for the safety of and maintenance of the vessel. No licensed officer shall be required to do work customarily performed by

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
seamen, such as washing, painting, etc. Officers may supervise such work.

Section Seventeen. Officers in charge of a watch shall each have their individual stateroom. All officers' quarters shall be properly equipped with running fresh water, cleaned daily, heated and lighted at all times during occupancy and be provided with sufficient clean linen and bedding. Each vessel shall provide a washroom for the use of Deck Officers only, this washroom to be equipped with hot and cold running fresh water and fresh water shower facilities and be properly drained. In case the provisions above are not complied with the officers involved shall be compensated at the rate of \$1.00 per day while occupying quarters aboard ship.

These provisions shall apply to all vessels excepting the Kvichak, Kanak, Alitak and Chilkat. During the cannery voyages of the Chirikof and Delarof the 2nd and 3rd officers will not be supplied with individual staterooms.

The above provisions of Section 17 shall also be modified as follows: Second and Third officers shall not be supplied with individual staterooms on the SS American Star and SS Madrono on the voyage to Bering Sea or from Bering Sea returning, but on arrival at the fishing grounds these officers shall be supplied with separate rooms. On the Fram the provision regarding clean linen shall apply.

Section Eighteen. No deck officer shall be per-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

mitted to take charge of a watch upon leaving or immediately after leaving port unless such officer shall have had at least six hours off duty within the twelve hours immediately preceding the time of sailing.

Section Nineteen. For all launches and tugboats on which heretofore both a Master and Engineer have been employed, the company agrees to employ Masters selected from the membership of the Association in the manner provided in Section #1.

Section Twenty. All licensed officers and launch masters shall have their meals served in the officers' Dining Saloon while on board and in the "Blue Room" while ashore.

When 10 A.M. and 3 P.M. coffee is provided for other members of the crew, the same shall be provided for the Mates. Masters and Mates shall have the right to make their own coffee, tea, cocoa, etc. at all times.

Section Twenty-One. A Licensed Deck Officer may stipulate in his shipping articles for an allotment of any portion of his wages as provided by law.

Section Twenty-Two. Masters excepting on Kanak, Chilkat, Alitak and Madrono shall be employed the year round and except as provided in Section 33 and shall be paid the following wages and while their vessels are in commission they shall receive in addition subsistence, quarters, maintenance and cure as customary.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Vessel	Out of Commission	In Commission
Bering	\$250.00 per month	\$340.00 per month
Chirikof	250.00 per month	340.00 per month
Delarof	250.00 per month	340.00 per month
Etolin	250.00 per month	340.00 per month
Kvichak	250.00 per month	300.00 per month
Kanak	180.00 per month	260.00 per month
Chilkat	180.00 per month	260.00 per month
Alitak	180.00 per month	260.00 per month
American Star	250.00 per month	340.00 per month
Madrono	200.00 per month	275.00 per month

Masters of above vessels do not receive overtime pay.

Section Twenty-Three. Masters on power boats who are not assigned as mate or master of any particular ship or tender, but who go up as passengers, shall receive not less than One Hundred Seventy Dollars (\$170.00) per month; and percentages as provided in Section 25.

Section 24. The following monthly wages together with subsistence, quarters, maintenance and cure as customary shall be paid to Licensed Deck Officers according to their respective ratings.

Vessel	1st Mate	2nd Mate	3rd Mate
Bering	\$220.00 per month	\$200.00 per month	\$185.00 per month
Chirikof	220.00 per month	200.00 per month	185.00 per month
Delarof	220.00 per month	200.00 per month	185.00 per month
Etolin	220.00 per month	200.00 per month	185.00 per month
Kvichak	205.00 per month	185.00 per month	170.00 per month

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Kanak	180.00 per month	170.00 per month	
Alitak	180.00 per month	170.00 per month	
Chilkat	180.00 per month	170.00 per month	
American Star	220.00 per month	200.00 per month	185.00 per month
Androno			
Madrono	190.00 per month	180.00 per month	170.00 per month

The rate of overtime pay for officers shall be \$1.25 per hour. Overtime shall be paid for work which is not the regular duty of a Licensed Officer. Not less than one hour overtime shall be paid for an overtime period of less than one hour elapsed time. If the interval in time between overtime periods is less than two hours, overtime shall be paid continuously. Any work in excess of fifteen (15) minutes shall be considered as one hour overtime. During the period between arrival in and departure from Bristol Bay all Masters and Mates shall perform work to which they are assigned, such as supervising loading and discharging on vessels, tallying, serving as Beach Bosses or Masters of launches, or in any other capacity heretofore employed, without payment of overtime. In lieu of overtime during this period Masters and Mates shall receive the percentages set forth in Section 25-A.

Section Twenty-Five A. Masters of major vessels, Masters of tugs, launches and self-propelling

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

lighters shall receive in addition to their regular monthly wages percentages as follows:

Nushagak	\$5.00 per 1000 cases
Kvichak	1.43 per 1000 cases
Naknek—Alaska Packers Assn.....	1.25 per 1000 cases
Egegak	1.25 per 1000 cases
Ugashik	10.00 per 1000 cases
Naknek—Diamond P	2.50 per 1000 cases

B—In the case of salted salmon, each barrel of salmon is to be computed as four cases and each half barrel as two cases of 48 pound tall cans.

Section Twenty-Six. Masters and other licensed deck officers shall tally fish as required.

Section Twenty-Seven. In Port except Bering Sea for vessels carrying cannery crew and cargo to and from Alaska; for work performed on Saturday afternoons, Sundays and Holidays, for work performed on other days between the hours of 5 P.M. and 8 A.M. overtime shall be paid.

Section Twenty-Eight. All tugs, launches and self-propelling lighters shall carry sufficient deckhands.

Section Twenty-Nine. The Company shall have a registered physician with proper equipment and ample medical supplies stationed at each location or within reasonable call.

No Licensed Deck Officer shall suffer loss of wages and bonus because of accident or occupational disease contracted during employment, and necessary medical and surgical service, except for

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

venereal diseases, shall be supplied free of charge while in Alaska.

Section Thirty. Before an officer is paid off at the end of the season a complete statement of his earnings shall be given him by an authorized official; all disputes over earnings must be adjusted before pay is accepted.

Section Thirty-One. While ship is at anchor in winter quarters, power transportation must be furnished to and from ship. Boat must have inboard power and must be able to withstand winter storms in the Bay.

Section Thirty-Two. The Masters, Mates & Pilots, Local #90, shall maintain and continue to do all work during the Alaska Fishing season that has been done by custom heretofore; such as launch and tugboat captains, tally work, beach boss, winter work in yard and on ships. Mates employed when vessels are laid up shall not be paid less than \$7.00 per day.

Section Thirty-Three. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

Section Thirty-Four. The Union agrees to furnish competent men within the employments covered by this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

In Witness Whereof, the parties hereto have executed this agreement on this day of May, 1940.

THE NATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS OF AMERICA.

.....

National Officer.

President, West Coast Local
 #90.

Secretary-Treasurer, West
 Coast Local #90.

ALASKA SALMON INDUSTRY, INC.

By

For:

Alaska Packers Association
 Alaska Salmon Company
 Red Salmon Canning Co.

PACKERS PROPOSAL 1940

Agreement

This Agreement executed this day of May, 1940, by and between ALASKA SALMON INDUS-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

TRY, INC. (for ALASKA PACKERS ASSOCIATION, ALASKA SALMON COMPNY, and RED SALMON CANNING CO., each herein referred to as the Company), and SAILORS UNION OF THE PACIFIC,

WITNESSETH:

Section One. If operated, all tug boats, launches and power scows manned by members of the Sailors Union in 1939 shall be manned by members of this organization in 1940. These men shall be shipped out of the offices of the Sailors Union of the Pacific.

Section Two: The wages shall be not less than One Hundred and Thirty Dollars (\$130.00) per month.

Section Three. In lieu of all overtime, except as hereinafter provided, deck hands shall receive the following appropriate percentage:

For 1 line Cannery	\$10.00 per 1,000 cases
2 line Cannery	5.00 per 1,000 cases
4 line Cannery	2.50 per 1,000 cases
8 line Cannery	1.25 per 1,000 cases

Deckhands shall tally fish as required without payment of overtime.

Section Four. Sailors shall have the right to make their coffee on the tender at all times.

Section Five. When working overtime not less than one (1) hour shall be paid for any fraction of the first hour; one-half ($\frac{1}{2}$) hour period to be paid

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)
after the first hour has elapsed. The overtime rate shall be One Dollar (\$1.00) per hour.

Section Six. When deckhands are called upon to load or discharge barges, regular overtime shall be paid at any time.

Section Seven. No member of the Sailors Union of the Pacific shall be required to go through any picket line established by organized labor, nor shall they be required to work if the vessel or the dock at which the vessel is lying is picketed by organized labor.

Section Eight. Blankets and linen shall be furnished by the Company, and clean linen will be furnished once a week, except on voyages to and from Alaska.

Section Nine. Any work performed such as coal-ing, fueling, or carrying stores, shall be done if fuel or stores are delivered on the end of the dock, otherwise overtime shall be paid.

Section Ten. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section Eleven. The Union agrees to furnish competent men within the employments covered by this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section Twelve. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

SAILORS UNION OF THE PA-
CIFIC

By

ALASKA SALMON INDUS-
TRY, INC.

By

For:

Alaska Packers Association

Alaska Salmon Company

Red Salmon Canning Co.

Q. I think you were testifying, Mr. St. Sure, as to what occurred on the 2nd. Is there anything further that occurred other than that on the 2nd of May, 1940? Anything that occurred further than what you mentioned?

A. On the 2nd of May there were meetings, negotiations, with the Marine Engineers; Masters, Mates & Pilots; Firemen; and a further meeting with the representatives of the Alaska Cannery Workers Union. At this meeting on the second with the Alaska Cannery Workers Union there was further discussion concerning the memorandum to be discussed, if

(Testimony of Paul St. Sure.)

any, to cover the operation or to act as a binder for the Cannery Workers in the event there was a Bristol Bay operation. The Union continued to insist that the memorandum, if it was to be executed, should be conditioned upon the 1940 Seattle Agreement alone or that if no agreement was reached there it should be based upon the 1939 San Francisco conditions, even though the workers had already gone out of Seattle upon the memorandum basis that they would operate under the 1939 Seattle if no agreements were reached. The Union Committee, likewise, insisted that we agree that the jurisdiction of the Cannery Workers [144] Union be extended to cover the nurses and that all nurses engaged in San Francisco should be taken from the San Francisco Local; and insisted that negotiations for the Daily men which we requested be conducted separately in San Francisco. They desired to have them continued to be negotiated in Seattle. The result was that no understanding was reached at that meeting, which was in the late afternoon of the 2nd of May, concerning a memorandum agreement. And, on the following day a communication was sent to Alaska Cannery Workers Union summarizing the meeting on the 2nd, which I have just described, and stating the position of the Alaska Salmon Industry in connection with the proposed memorandum.

Mr. Madison: I offer this letter in evidence dated May 3, 1940. I ask that be marked Exhibit CC.

(Received in evidence as Respondent's Exhibit CC.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT CC

May 3, 1940

Alaska Cannery Workers Union
32 Clay St;
San Francisco, California

Gentlemen:

Your committee has advised us that you would give us a statement agreeing to be bound by whatever contract may be negotiated in Seattle for Bristol Bay this year, provided we agree for the San Francisco operators that whatever nurses may be engaged by them this year will be employed through Local Five of the Alaska Cannery Workers Union. Your committee also declined to negotiate here for tallymen even though none of the northern canners employ tallymen from your union.

Your proposal is unsatisfactory for three reasons. First, it does not leave us with any understanding in the event there should be no Seattle agreement with your union. The San Francisco companies have from the start of negotiations taken the position that they must have definite understandings with all organizations before proceeding to outfit expeditions, and your proposal falls short of meeting this condition.

Second, in accordance with your earlier correspondence, we agree with you that where there is a common interest between Seattle and San Francisco operators, all negotiations should be conducted in Seattle. This includes jurisdictional questions as well as other working conditions, and we of course

(Testimony of Paul St. Sure.)

agree that whatever decision may be reached in Seattle as to the nurses will be binding upon the Alaska Packers Association and Red Salmon Canning Co.

Third, we request that negotiations for tallymen be conducted here, inasmuch as Seattle employs no tallymen from your organization.

We repeat that we desire to proceed with plans for Bristol Bay upon the understanding that the 1940 Seattle agreement will be applied, and that in the event no negotiations are concluded there, the 1939 Seattle contract will be applied. This we believe, is the same basis upon which your union in Seattle has released a number of expeditions to Alaska already. As we have also informed you, we must have your reply to this before the close of the day.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By

EHM/CH

Q. Now, Mr. St. Sure, referring back to Exhibit BB, the list of proposals, written proposals, that were discussed, do you recall the date approximately when those were submitted? Did you testify the 27th? 28th?

A. 27th, 28th, 29th, along in that neighborhood; there were letters of transmittal attached to each.

(Testimony of Paul St. Sure.)

I don't seem to have them here, but it was prior to the 1st of May, my recollection being, as refreshed from the date of the letter to the American Communications Association, the 29th of April. I have, however, in my mind the other memoranda were sent out a day or two previously to that.

Q. That is, the 27th, 28th, 29th refers to April, 1940? A. That is right.

Q. Did anything else happen on May 2nd, now, you haven't testified to? A. Not that I recall.

Q. Then, what happened on May 3rd?

A. May 3rd, following the delivery of the letter that has just been marked one addressed to the Alaska Cannery Workers Union Memoranda Proposal we received a reply from Mr. Whaley at about ten minutes to five in the afternoon simply stating in reply to our letter that their position that they had outlined to us on the 2nd of May was their final position. By "they" I mean the Alaska Cannery Workers Union.

Q. That is dated what date? A. May 3rd.

Mr. Madison: I ask that that letter be introduced in evidence and marked Exhibit DD—letter from Whaley to St. Sure dated May 3rd. [145]

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT DD

Alaska Cannery Workers Union

Local No. 5, C. I. O.

George Woolf, President

Karl G. Yoneda, Vice-President

Raymond Aguirre, Secretary

32 Clay Street

San Francisco

Phone EXbrook 4871

Affiliated to

United Cannery, Agricultural Packing & Allied
Workers of America

Committee of Industrial Organization

Maritime Federation of the Pacific

San Francisco District Industrial Union Council

International Labor Defense of the United States

May 3, 1940

BY SPECIAL MESSENGER

Alaska Salmon Industry, Inc.

230 California Street

San Francisco, California

Gentlemen:

In answering your communication of May 3rd, we re-iterate our proposal as outlined to you 4:30 p.m. yesterday.

(Testimony of Paul St. Sure.)

We are not in a position to offer any other statement.

Yours very truly,

[Seal]

MAURICE WHALEY

M. Whaley, Negotiating Committee Chairman

MW :D

uopwa—34

Received May 3, 1940 4.50 P.M. Messenger boy.

Eat More Canned Salmon—Packed Under Union
Conditions
(Union label)

A. Also, on the 3rd of May there were meetings with representatives of the American Communications Association, a meeting with the Committee of the Marine Cooks and Stewards, and a meeting with representatives of the Marine Firemen and, I believe also on that day, we received a copy of the memorandum which is already in evidence under date of May 2nd a memorandum Mr. Cayton sent out to all the unions and, likewise, to the packers containing an outline of the unions position as of that date.

By Referee Roden:

Q. You say that is in evidence?

A. It is already in evidence, I believe, as an Exhibit of the Claimants. Shortly in the afternoon, around one to one-thirty in the afternoon I received

(Testimony of Paul St. Sure.)

a telegram from Mr. Brewer, Chairman of the Maritime Labor Board, Washington, which is similar in tone to the one which was already introduced in evidence by claimants wherein the services of the Mediator of the Maritime Labor Board were offered.

Mr. Madison: I won't introduce that telegram because it is substantially the same as the one Mr. Cayton got.

A. In reply to that a telegram was dispatched to Mr. Brewer stating there was not much time left to solve the questions that were giving us difficulty, but that if the Mediator desired to assist he could assist in the short time remaining, but it was impossible for us to extend the time we had established as the last date upon which or before which it would be necessary to reach an agreement.

Mr. Madison: I ask that this telegram dated May 3rd to Mr. Brewer, signed by Paul St. Sure, be introduced in evidence and marked Exhibit EE.

(Received in evidence as Respondent's Exhibit EE.)

CANNERY CO. EXHIBIT EE

Western Union Telegram

May 3, 1940

To Robert W. Bruere

Chairman Maritime Labor Board

Washington, D. C.

Retel this date deference Alaska Salmon Industry, negotiations public announcement was made last

(Testimony of Paul St. Sure.)

week operations could not be undertaken unless union agreements reached by midnight tonight. Not much time left for attempting to resolve questions but we are still meeting and will continue to do so up to the time announced. If mediator can assist in brief time remaining we will welcome his services but extension of time limit impossible at this late date.

ALASKA SALMON INDUSTRY, INC.

J. PAUL ST. SURE

Q. Were there any meetings on the 3rd?

A. I have already indicated the meetings we had with the several unions. However, about the time the telegram was received from Mr. Brewer and the reply dispatched to him, which was shortly after noon of the 3rd, Mr. Gertz came to the office of the Alaska Salmon Industry, Inc., and I showed him the reply which I had sent to Mr. Brewer and told him we would be very pleased to have any suggestions or services that he could offer, and after talking with him for a very few moments he stated to me that he was going to leave our office and communicate with Mr. Cayton or with others of the Maritime Federation and endeavor to arrange a meeting [146] for later in the afternoon. My recollection is that later that afternoon, around four o'clock, Mr. Gertz and Mr. Cayton met with Mr. Moore and with me and at that time we reviewed and discussed the negotia-

(Testimony of Paul St. Sure.)

tions that had been in progress. We discussed the demands of the unions which had been received by us and the counter proposals and endeavored to analyze the differences which existed between the unions and the operators. As Mr. Cayton has stated, the statements were made that the principle point of difference was the difficulty in connection with the Fishermens Union and the proposal which had been made, but that there were likewise very substantial differences involving a proposal made and discussed over a period of many days with the Marine Cooks and Stewards Union; and there were other differences including those of jurisdiction as well as those of cost which existed with a number of the other unions. We analyzed or attempted to item by item the contracts and counter proposals as I have stated. I outlined to Mr. Gertz the reason for the establishing of a date before which agreements should be reached and pointed out to him the experience of the previous years that the operators had had under which experience they had invested monies and supplies and equipment and cans and provisioning and preparing for a trip, and actually signing on workers, only to find that some union of the group had last minute demands which delayed the entire expedition under penalty of having to give in to, say, save its loss; and that policy had clearly been determined from the beginning of these negotiations and so stated to the unions we wanted to avoid that method of negotiating.

I pointed out the difficulty we had encountered

(Testimony of Paul St. Sure.)

wherein the Maritime Union Group had originally declined to bargain at all with us for a period of some days or weeks until certain claims had been paid. That we had lost considerable time in attempting to negotiate by reason of that. I discussed with them, also, the particular problems of overtime and conditions which we had encountered in analyzing the unions contracts and payrolls and the comparisons which had been made in connection with the conditions which were in effect out of Seattle, which in each instance were lower than those that were operated or permitted as a basis for operation in San Francisco.

Mr. Gertz endeavored to secure some further discussions with the Marine Cooks and Stewards to the end there might be some compromise made even at the last moment in connection with the differences we had with them. We discussed, I believe generally, the matter of the [147] difficulties we had in arriving at a memorandum agreement with the Alaska Cannery Workers Union; and in general reviewed the situation in its entirety, as I say, step by step and item by item and contract by contract. Mr. Gertz expressed, I believe, at that time his belief that the situation looked pretty hopeless but so far as he was concerned he would endeavor to make some further inquiries and have further discussions and would communicate with us later in the evening. The Fishermens Union, particularly, was meeting that night for a final meeting in connection with a proposal on fish prices. We had a further meeting

(Testimony of Paul St. Sure.)

with Mr. Gertz later that evening. Mr. Cayton was not present at that time. I believe he had been talking with Mr. Gertz in the *interum*. And again we spent, I think, two hours or more going over the various possibilities of reaching an agreement and discussing particularly the situation which past years had developed whereby the San Francisco operators were no longer competitive with the Seattle operators. They could not operate except at labor costs which would be extremely beyond or higher than those out of Seattle. That that was one of the *principle* sources of our difficulty and one of the *principle* reasons for inability to reach an agreement.

Mr. Gertz left the office, as I recall, around ten o'clock at night. We remained there until after the time established as the final time for any possible agreement, midnight. And, as I recall it, about midnight or thereafter we received telephone calls both from the representatives of the Fishermens Union and Marine Cooks and Stewards Union, that there had been a rejection of the agreement finally, and again, by the Fishermens Union and that the other unions, therefore, were not in a position to be able to complete negotiations with us.

That about completes the chronological story of the occurrences up to the 3rd of May, or that night.

Q. Is there anything that occurred after that time which you want to put into the record, Mr. St. Sure? Anything you consider material to this?

A. I don't recall anything that happened following that time.

(Testimony of Paul St. Sure.)

There was no further communication and, so far as I know, to this day there has been no further communication with the Alaska Salmon Industry Office whatsoever or with the operators individually from any union. There has been only the information come to us that as the result of the negotiations in Seattle that an agreement was reached, as I have already testified, with the Alaska Cannery Workers Union at Seattle, upon the express condition that that agreement [148] which is rather generally in line with 1939 Seattle contract with some slight modifications that that agreement was reached for Seattle and Portland operations upon the express representation there would be no operation out of San Francisco. That if one was attempted out of San Francisco that a separate contract would have to be negotiated for San Francisco operations.

Referee Roden: That is the statement you made here sometime ago.

A. Yes. I am just repeating that as the last record we had of any direct negotiations.

Mr. Madison: I have no further questions.

(Remarks were made off the record.)

Cross Examination

By Mr. Resner:

Q. Directing your attention to the last thing you testified to, Mr. St. Sure, and that is the meeting with Mr. Gertz and Mr. Caton on the night of May 3rd, you heard Mr. Cayton's testimony this morning, of course. Do you recall Mr. Cayton's making the statement at that time if he could get over the

(Testimony of Paul St. Sure.)

hump of this fishermens situation there would be no trouble with the other unions?

A. Well, he felt, as he expressed it, we were all thinking out loud, that the major difficulty was between the fishermen and the operators as well as the difficulty between the Marine Cooks and Stewards and the operators. And it was expressed by each of us—Mr. Gertz and Mr. Cayton and myself—that because the other differences seemed to be of so much lesser consequence it was reasonable to suppose if the fishermen would agree and the Marine Cooks and Stewards would agree the others probably would also. There was considerable discussion to that effect. But I don't recall any statement being made by Mr. Cayton as to what the other unions would do. It was simply reasoning out loud. In fact, Mr. Cayton expressed to me, as he did this morning, he had to be very careful in any expressions he might make that would commit other unions.

Q. He did say if this Fishermens Union situation could be gotten over he didn't think any difficulty would be had with the other unions?

A. He expressed that as his belief.

Q. Do you recall at that time Mr. Gertz made the statement to this effect? That if this Fishermen situation were straightened out that he would recommend to the various San Francisco Unions that they execute the 1939 agreements out of San Francisco?

A. I don't [149] recall his making such a statement. He did have further discussions with the Ma-

(Testimony of Paul St. Sure.)

rine Cooks and Stewards and secured from them a last minute half-way suggestion. By half-way I don't mean disparagingly, but I mean lightly half-way on certain of the overtime proposals we had. He received that by phone on the evening of the night of the 3rd of May and we were still rather far on that despite his intervention in the last few hours on that situation. It wouldn't be consistent in my mind in view of the attitude expressed by the Marine Cooks and Stewards for him to have made the expression he would make the 1939 agreements. He might recommend them, but he expressed as in the Marine Cooks and Stewards, he would not execute the 1939 agreement.

Q. Well, let's leave the Marine Cooks and Stewards and Fishermen out of this thing excepting what you have just stated here as a fact, if those situations could be straightened out didn't he say he would recommend to the various other unions concerned, including the Alaska Cannery Workers Union, the signing on from San Francisco for operation on the basis of the 1939 San Francisco agreements?

A. Well, I don't recall his making that statement. As to most of the other unions concerned, I think that we were not very far apart in the connection with the 1939 terms, with the exception of the Cannery Workers Union. Our opinion has been they should sign a memorandum agreement agreeing to be bound with Seattle 1940 or Seattle 1939; and they have insisted upon San Francisco 1939, which we had indicated was not acceptable.

(Testimony of Paul St. Sure.)

Q. In other words, this whole matter can be summed up in that simply this union wanted the minimum of 1939 San Francisco agreement and the operators didn't want to give it?

A. No, I would say that wasn't quite as simple as that. The unions request to us were for increases over San Francisco 1939 ranging from three to, I think, some 9%, depending upon the various contracts that were submitted. We, in turn, said not only could we grant no increases in wages and operating costs, but that we would have to find, if possible, some means of reducing the labor costs, which meant we wanted reductions, at least, into some of the unions. Apart from that, however, there were many and not inconsequential demands for changes in conditions and clarifications which had to do directly with method of operation, upon which we were far from agreement; although, I agree that they were of less consequence to us than the matter of actual out of pocket dollar cost that went out of payroll. However, they were matters of consideration and the sole difference, therefore, [150] was not the question of dollar costs alone.

Q. Let me put the question this way. Did the operators ever offer to reexecute for 1940 the 1939 contract for the Alaska Cannery Workers Union of San Francisco? A. No.

Q. On the other hand, did the union negotiators on more than one occasion offer to the packers to make the expedition this year out of San Francisco on the basis of San Francisco 1939 agreements?

(Testimony of Paul St. Sure.)

A. No. The situation was this. Prior to April 1st the Cannery Workers Union submitted to us a contract which was in excess of our 1939 San Francisco contract. On April 1st they withdrew their negotiations from San Francisco entirely and took them to Seattle. The only offer that they made to us was at the very end of the road on the first, second, and third of May, 1940, wherein they said that they would take either Seattle 1940 or San Francisco 1939, whichever were the better, which was a direct violation of the understanding we believed we had with them for a uniform contract out of San Francisco, Seattle, and Portland, 1940.

Q. They would not go out of San Francisco for less than 1939 San Francisco agreements?

A. They would not, until the final day or two's discussion that I mentioned; and then only if you can draw the inference. They would not accept, rather, a Seattle contract, which was less than San Francisco, in any event. They said to us they would take whichever gave them the greater benefit, which was not the basis of negotiations as we understood. They caused the negotiations to be removed from San Francisco to Seattle.

Q. Well, in any event, it was clear from that that the minimum the union wanted out of San Francisco was the 1939 San Francisco Agreement?

A. At that time it was, yes, sir.

Q. I want to draw your attention to the letter of April 3rd, which is in evidence as Cannery Exhibit I. In that letter, referring to page 5, you list

(Testimony of Paul St. Sure.)

your proposals to the various unions and you list your proposal No. 2 addressed to the Alaska Fishermens Union wherein you state, "For Central Alaska operations the 1939 agreements will be renewed provided that modifications heretofore negotiated shall be reduced to writing and included in the agreement; and provided, further, that the provision for penalty of \$75.00 if the men leave be eliminated. It is understood, further, floating equipment shall be handled both on and off Chignik—that proposal, of course, you were [151] only making an offer to the Fishermen for Central Alaska. This has nothing to do with Bristol Bay? A. That is correct.

Q. Now, with respect to Bristol Bay. Operations Packers Proposed: Reduction in wages, over the price of fish in 1939, did they not?

A. That is correct.

Q. Can you tell us what that reduction amounted to? How much?

A. Two and a quarters cents a fish.

Q. That is last year. The price of fish was what in 1939?

A. Fourteen and a quarter—and, I believe, the proposal was twelve.

Q. And the proposal this year was twelve cents?

A. Correct.

Q. Now, the agreement that ultimately has been reached in Seattle between the Alaska Fishermens Union and the packers was reached on the basis of the 1939 price, was it not?

A. I understand it was, yes.

(Testimony of Paul St. Sure.)

Q. In other words, the Chignik and Karluk fishermen got what they wanted and the Cannery gave the fishermen what they asked for with respect to fish prices this year?

A. With respect to fish price, yes.

Q. I want to draw your attention for a moment, now, to the operation of the Alaska Salmon Company. I believe in your direct testimony you stated the Alaska Salmon operated only at Bristol Bay?

A. Correct.

Q. In other words, they have no operations in Central or Southeast Alaska, either Chignik or Karluk?

A. That is correct.

Q. Isn't it a fact, Mr. St. Sure, that the agreement for the Bristol Bay operation is generally reached sometime in May of each year between the Packers and the Unions?

A. I couldn't testify as to this. I don't know.

Q. Directing your attention to the question of the curtailed season, isn't it a fact that one of the reasons why the operators were asking for the reduction in the contract agreement, that is, with respect to wage scales and other matters which might have increased the operating cost for this year, is due to the fact this is a curtailed season in Alaska?

A. Well, there was considerable difference of opinion just as Mr. Vegen expressed both opinions—supposed to be a light season. The fact that the season was to be curtailed did, I feel, influence the packers in taking a closer look at their costs, and when they made the analysis they found they were

(Testimony of Paul St. Sure.)

losing about fifty cents a case on the fish they packed under present operating costs. I suppose the additional hazard of having a short catch might have influenced them in their reason, but not to the extent they didn't want to go fishing. [152] They wanted to try on a chance that would give them a chance of breaking even on a hazardous business.

Q. So, fishing is a hazardous business even in Alaska as every place else?

A. So I have learned.

Q. But, with respect to the negotiations with the Alaska Cannery Workers Union, your negotiations here in San Francisco were predicated upon the fact that the costs had to be reduced below what was paid this union out of San Francisco if there was going to be any season at all?

A. Now, as to the Cannery Workers Union we were satisfied, I take it, both from the course that was followed by us as well as by the discussions I had with the Packers to take our chances on having at least no worse a deal than they got out of Seattle.

Q. The Alaska Cannery Workers never declared any strike against the operators, so far as you know?

A. Not that I know of. There was no operation to be struck.

Q. No operation to be struck, in other words. And, directing your attention to the operation in Central Alaska this year prior to the time when this season opens, I think it is around the middle of April, is it not, that ordinarily it would have opened? That is, your operation in Central Alaska?

(Testimony of Paul St. Sure.)

A. There would have been sailings.

Q. Sailings would have been around the middle of April. In any event, prior to that time you had no workers employed in any of your plants in Central Alaska?

A. Not to my knowledge. There may have been watchmen or some others there, but I am taking it by ear. I don't know as to that.

Q. And the same is true with regard to the Bristol Bay operation?

A. I assume so.

Q. Mr. Resner: Can I have about five minutes, Mr. Referee, to check these letters?

(At 3:50 p.m. a five minute recess was taken.)

By Mr. Resner:

Q. Mr. St. Sure, directing your attention to this question of wage claims, you testified that one of the first things the union asked before they entered into negotiations for a contract was last years wage claims be settled. Can you tell us what that is?

A. Well, there were a number of claims involving—I say a number, there were several, I don't recall how many—six or eight, perhaps, involving several [153] unions having to do with disputes over time or questions of interpretation of contract, that his men were paid at one rate and they claim were entitled to work at another rate. There were claims over that, largely claims of spite, disputed overtime. I believe they all were with the exception some of the Alaska Salmon were not settled.

Q. Now, this question of wage claims being discussed this year before the contracts were negotiated

(Testimony of Paul St. Sure.)

is not anything unusual in this industry, is it? The same happened last year did it not?

A. I had nothing to do with it last year, so I can't state. I don't know.

Q. Do you know anything about whether or not the Alaska Packers are operating their traps this year in Central Alaska?

A. That I can't state. I don't know.

Q. You identified a letter, which is the Packers Number C, from the union, dated November 8, 1939, and addressed to Mr. Tichenor, advising the Alaska Packers that Local No. 5, Alaska Cannery Workers Union, had been designated by N.L.R.B. as the bargaining unit and was ready to negotiate. Do you know whether a reply had been had by the Alaska Packers Union?

A. I do not, no.

Q. Directing your attention to the Bristol Bay operations you testified that it was your impression that out of Seattle the wages were less to the workers than they were out of San Francisco. Now, is your impression that that applies to the Alaska Cannery Workers Union out of San Francisco?

A. It does. I would like to correct or, rather, amplify that answer by stating that my understanding is that the basic rates insofar as cannery workers wages are concerned are comparable or about the same, but that the difference in the cost of operations out of San Francisco as against Seattle, the costs out of San Francisco being higher, have to do with the Culinary Department which is handled by and manned by the Alaska Cannery Workers, and that

(Testimony of Paul St. Sure.)

the differences in both conditions, as to number of men required to be employed and amount of over-time required in a contract and general resulting costs, is higher out of San Francisco than it is out of Seattle. I am referring to Bristol Bay now.

Q. Yes. But the wage scale for the Cannery Workers, both AB and B classifications out of San Francisco and out of Seattle is the same?

A. I believe that is correct. The comparison of contracts will show that, but I believe that is correct.

Q. You made some comment on your direct examination to the matter [154] of nurses, watchmen, and similar classifications which the Alaska Cannery Workers Union, Local 5, was demanding jurisdiction for?

A. I think I mentioned particularly nurses. The watchmen I mentioned in connection with the sailors union and fishermens union. My recollection is the Cannery Workers specifically discussed with us nurses, orderlies, and embalmers, I believe. I don't recall we executed it. In fact, I remember stating to the Cannery Workers Committee if they represented those people and those people were members of their union so far as I was concerned that was the end of the matter; however, the discussion that occurred in connection with that was that the entire negotiations be moved to Seattle, and the only discussions we had were when late in the game, along the forepart of May, the union requested specific agreements be reached for nurses. We felt it

(Testimony of Paul St. Sure.)

should all be Seattle or none, although we then asked Daily men be here.

Q. But so far as your negotiations with the Alaska Cannery Workers Union were concerned the question of who represented these nurses, waitmen, and so forth, never was a stumbling block to your arriving at an agreement?

A. Only insofar as I mentioned, the question of where the contract was to be negotiated, which might be over them. It was not a question of who claimed them or who they were affiliated with.

Q. In other words, the negotiations were transferred to Seattle, but the Packers recognized this local represented these workers, these classifications?

A. I have no reason to question it insofar as I was concerned. If the claim was made these people belonged to the Cannery Workers Union that was no business of ours. They could belong to what they pleased.

Q. The only point I want is that was never a stumbling block or anything preventing agreements from being consummated for the current season?

A. Only so far as it came in the picture when we endeavored to secure this memorandum agreement governing operations out of San Francisco. When we asked for Seattle 1940 or Seattle 1939 the union wanted something else. They wanted Seattle 1940 or San Francisco 1939 and also——

Q. (Interupting) Depending on which was the better contract for the union?

A. Yes. Also requested that we specifically rec-

(Testimony of Paul St. Sure.)

ognize their jurisdiction over the nurses, as I remember, and agree they be covered by the contract. Our position was that was a matter to be negotiated in Seattle, but we didn't either reject or accept that claim of [155] jurisdiction; although, previously, I had stated to the union although so far as we were concerned the question of representation was up to the employe.

Q. And that was transferred to Seattle for negotiations?

A. I assume it was transferred long before, and I assume it was settled in whatever contract they reached up there. In any event, it didn't affect us because there was this proviso in the final settlement, of the settlement I referred to before, if we had operations out of here we would still have to negotiate a contract out of San Francisco.

Mr. Resner: I want to offer at this time. I don't think it will be necessary to put Mr. Woolf on the stand or any of your people, because it is admitted, a letter to which the union sent to all three of the member concerns of the Alaska Salmon Industry that they represented these particular classifications, and were so certified before the Labor Board.

A. I don't recall seeing such a letter.

Q. It was sent in January.

A. I know of no discussion had concerning it, except what I mentioned to you.

Mr. Madison: I don't think the letter is relevant.

Mr. Resner: I only offer them because of the fact

(Testimony of Paul St. Sure.)

I want to clear up any inference drawn from any testimony the question of who represented these workers had anything to do with the inability or failure to arrive at agreements for the 1940 season.

Mr. Madison: That letter wouldn't have any application to that. It is just a statement. You want to prove they were certified. Why don't you produce the certification?

Referee Roden: Is there any contest on the proposition whether or not the Cannery Workers Union was authorized to be the bargaining agency?

Mr. Madison: Absolutely none, so far as I am concerned.

Mr. Resner: So far as that is concerned, then, we won't have to have those letters go in.

Mr. Madison: I just don't know whether they are or not.

Examination by Mr. Resner:

Q. Well, then, after the wage negotiations were transferred to Seattle the Union continued to negotiate here with you for Manning Scales and other matters having to do with the operations out of San Francisco?

A. Manning Scales and the physical set-up—porters, and so forth, supplies, hospital requisitions, and so forth—on matters which had to do with the physical equipment and supplies [156] and Manning Scales.

Q. Well then, Mr. St. Sure, in connection with all these negotiations with the Alaska Cannery Workers Union of San Francisco they had at all

(Testimony of Paul St. Sure.)

times stated they were ready, willing, and able to go and wanted to go to Alaska this season, did they not, on the basis of at least the 1939 San Francisco Agreement.

A. I don't know quite how to answer that. They stated they wanted to go on the basis of agreements that was to be negotiated in Seattle. They stated they wanted that agreement to be as we said we wanted it to be, coastwide in application so there would not be any unfair or undue advantage or disadvantage to any operator. We particularly wanted that because attempts had been made the previous year, I understand, to have the same thing without success. We then felt that we had to have an agreement with the Cannery Workers Union whereby there would be a coastwise agreement negotiated in Seattle, and we came up to the point of endeavoring to get the Local Union No. 5 to affirm it. We found that they were unwilling to affirm it except upon terms they would dictate, which was despite what Seattle might negotiate they still wanted San Francisco negotiations if they were higher based upon 1939; and, in view of the fact the previous year there had been a similar agreement to go on coastwise basis, which was repudiated by the San Francisco operators we didn't feel they were offering anything *except* failure to reach agreements they had previously agreed to go along on.

Q. In other words, though, it was always clear to you they wanted at least what they had last year?

(Testimony of Paul St. Sure.)

A. As I say, that was made very clear to us in the last few days of negotiations . . .

Q. And on that basis—I didn't mean to interrupt you. Pardon me!

A. I say, when for the first time we found they were not willing apparently, to go along on coast-wise agreements negotiated in Seattle but wanted to do the same sort of thing that had been done the year before, go up to the point of agreeing to a coast-wise agreement and then endeavor to again put San Francisco in the position of being higher than the other operators.

Q. But it was always clear to you, was it not, they would go and wanted to go on at least the 1939 San Francisco agreement?

A. It was so indicated at the end of the road with this exception. They said "We will go on San Francisco 1939 unless Seattle gives us better than San Francisco 1939, in which event we will take the better of the two. That is the final position. [157]"

Q. Of course, that position was made known to you before your final deadline?

A. Yes, the last day or two—3rd of May, I believe, we had a letter stating, "that is our final position", on the day of the deadline.

Mr. Resner: I think that is all.

Redirect Examination

By Mr. Madison:

Q. May I ask a question? Mr. St. Sure, you are testifying here under direct examination in regard to your negotiations you conducted with the Union;

(Testimony of Paul St. Sure.)

I think, the period of those negotiations ran from sometime in March and down to sometime in about May 3rd. Now, during that period did you have meetings from time to time with the people that you represented? With the executives of the three canning companies whose names have come up here?

A. Practically daily, both before the 1st meetings with the Unions on the 7th of March and with the Maritime Federation and until and after the 3rd of May I met, Mr. Moore with me, with the executives or executive offers of the Alaska Packers Association—Mr. Barthold, Mr. Alvin Varthold, and Mr. Tichenor, and with Mr. Peterson of the Red Salmon Canning Company, and Mr. Fleager of the Alaska Salmon Company, and others in that organization.

Q. And now with reference particularly to the claim made here that these negotiations were not bonafide, that these cannerymen never intended to go, and these negotiations were simply, if I may use the expression, “window dressing”. What, generally speaking, occurred at these various meetings with regard to their willingness or wish to go to Alaska this year?

A. The discussions which were frequently had turned to the question of what the result would be of failure of negotiations; and each of the operators, with the exception of the Alaska Salmon people, after or about the time they finally announced they would have to abandon their opera-

(Testimony of Paul St. Sure.)

tion because of the difficulties they would have had expressed a desire to go fishing and endeavor to make an expedition for the reason they had monies invested in plants, boats, and equipment, which would be a total loss to them in the event they were not able to go fishing. A matter of discussing of the possibility of chartering ships was gone into, and in each instance the ships that were required for the operations of Central Alaska as well as operations for Bristol Bay were actually withheld from charters which were available at that time. In other words, that they might be available to go fishing with the resultant loss to the [158] companies of salvage, at least, of many thousands of dollars; which so far as I know, to this day they have never attempted to secure because they wanted the ships available for the purpose of completing the expeditions and going fishing this season.

Q. Did you discuss with them in respect to these letters that were written? I think the first was dated April 3rd and the second one with regard to the Bristol Bay operation sometime later. *In* April 26th in discussing the sending of those letters did you have talks with them in regard to why it was necessary to send those letters at that time with respect to the purchases they had to make? With materials and plans they had to make if the expedition was to sail?

A. Yes. Those matters were discussed on many occasions. The question was first raised, I believe, in discussions as to how we could avoid the past

(Testimony of Paul St. Sure.)

practices I understood had occurred, having as I have mentioned, these last minute demands made—that is, after ships had been outfitted and after equipment had been purchased and after some of the men had actually been signed on one or the other of the unions would come up and demand for additional men to go on board or for additional wages or additional conditions. The previous season, I believe, there was actually a strike at the yard of the Alaska Packers which held up their getting away; and, I think there were other strike actions or last minute demands which delayed sailings to later than safely the ships could get away. In order to avoid that, as we indicated in our first letters to the union, we were going to endeavor to reach union agreements prior to the times complete commitments were made for purchase of supplies and outfitting of this expedition so we wouldn't have a loss in the event these agreements weren't finally consummated; and an announcement was made, without allowance for storm or accident, which would allow us to get away the last possible day from San Francisco without allowing a safety factor to make and complete the expeditions to Central Alaska. A limited number of days was allowed for the provisioning of the ships and equipping them and the purchase of supplies, perhaps less than the time in accordance to the operators statements to me than safely could be allowed, with the idea we would have everything completed in the way of agreements before we would risk further

(Testimony of Paul St. Sure.)

investment for the outlay of these supplies, and so on, in connection with the Central Alaska operation. That was worked out on that basis. And in connection with the Bristol Bay operation that [159] was the same formula and procedure. Indeed, I recall Mr. Peterson of the Red Salmon Company felt the date of May 3rd set for Bristol Bay operations was not a safe date; that it was too late. And he felt that the 1st of May should be the last possible date upon which they safely could undertake to complete preparations for the operations of Bristol Bay.

Previous years experiences, as I say, were reviewed. However, the consensus of the two operators then concerned with Bristol Bay—Alaska Packers and Red Salmon—was in view of the fact the Fishermens Union did not meet on the last possible meeting they could have to consider this proposal until the 3rd of May, they having once considered it and rejected it, the deadline should be extended to the 3rd of May, midnight, so they could have this last meeting in order to finally consider the proposal made without the acceptance of which there could not be operations at Bristol Bay. So, in each instance, dates were set solely upon the basis of establishing a time beyond which it was not safe to plan to complete the investments and preparations of the expedition and dates before which it was necessary agreements be reached with the unions if we were to avoid the

(Testimony of Paul St. Sure.)

same type of last minute worse demands that had been experienced the previous season.

Q. Was anything said at any of these meetings you had with the packers that would indicate or imply in any way these negotiations were not bona-fide? A. There was none.

Q. Was there anything to indicate that so far as the Alaska Packers Association was concerned or the Red Salmon Canning Company was concerned or the Alaska Salmon Company prior to the date with regard to them that you have mentioned that they did not intend to go fishing and would go fishing and could go to Alaska with an expedition from San Francisco in the event a proper labor arrangement could be made with the unions involved?

A. Every evidence that I had in addition to the statements that the operators, themselves, made to me which, I believed, indicated a desire to go fishing and, indeed, had made partial preparations to complete their expeditions. There were some monies expended, equipment purchased, nets bought, cans purchased. There were some supplies and machinery purchased beyond that in preparation for the season of 1940, and those expenditures amounted to many thousands of dollars, in anticipation of an actual operation in 1940. [160] The ships in addition that I have mentioned that were to be used for those expeditions were not chartered, although attractive charters were available.

Mr. Madison: That is all.

(Testimony of Paul St. Sure.)

Recross Examination

By Mr. Resner:

Q. Mr. St. Sure, referring to this statement a moment ago that last minute coercive demands had been made by the union, no such demands were made this season, were they?

A. For the reason that I feel the operators took the position they would not attempt to complete their preparations for expeditions until there had been a commitment reached; therefore, no opportunity for such demands to be made alongside the ships, because the ships weren't prepared for sailing.

Q. But, in any event, the operators had known for a long long time what the unions would sign for? That is, Local 5 of the Alaska Cannery Workers Union?

A. As I said, they come in on the 3rd or 2nd of May. It was, the day of the time we had set as the last safe date for making preparations.

Q. They renewed the original demands as being the most they wanted?

A. We knew they had requested an increase over 1939 conditions and we felt the 1939 conditions were already so excessive we wouldn't operate at a profit.

Q. But in any event, when that 1939 agreement was presented to you you knew that was the most the unions wanted?

A. We knew that was what they wanted at that time, yes, sir.

(Testimony of Paul St. Sure.)

Q. And that was, oh, five or six weeks prior to the Bristol Bay expeditions old starting date, was it not?

A. I would say it was approximately a month before. The 27th of March, as I remember it, is when the demand was presented to us, and withdrawn on the 1st of April.

Mr. Resner: That is all.

Examination

By Referee Roden:

Q. Mr. St. Sure, why did the Alaska Salmon Company quit?

A. You missed the statement made to me. They had financial problems which didn't permit them to make the arrangements financially for outfitting for Alaska for 1940. They had financial troubles, among which were the fact that the operations the previous season had been a loss and a contributing factor in that they believed the excessive labor costs plus their own financial difficulties made it unwise for [161] them to attempt operations.

Q. It wasn't due to labor difficulties?

A. Except in the sense I mention. That was one incident, one factor only.

Q. Now, are you acquainted with the conditions of the Salmon market at the time these negotiations took place around about on the middle of April, or thereabouts?

A. I am not, sir. I prefer one of the Alaska operators testify to that. I think they are better

(Testimony of Paul St. Sure.)

qualified, and I haven't the information except by ear.

Referee Roden: Any further questions, Mr. Resner?

Mr. Resner: None for me.

Mr. Madison: I have no further questions.

(Remarks were made off the record.)

Mr. Resner: I want to ask you this, Mr. Madison, will you call Mr. Fleager?

Mr. Madison: He won't add anything to my case. Do you want to call him?

Mr. Resner: The only point I wanted to bring out from Mr. Fleager was the letter wherein it is indicated, at least in my construction of these letters, Alaska Salmon had other reasons for not going fishing than any labor difficulties. You will so stipulate to that?

Mr. Madison: I will stipulate to what Mr. St. Sure said. Or, if you want to make any broader stipulation write it out and let us take a look at it?

(Remarks were made off the record.)

Mr. Oliver: On these two lists of persons supposed to be employes of Alaska Salmon Company in 1939 it was admitted solely for the purpose, I think, of indicating their records show these members were employes. It was admitted. I said I wanted the opportunity to check it. Now, it has been checked with respect to the long list upon which there are 250 names. I find that one man has since died, he being No. 245 on the list, Richard

Throll. That No. 207 had no earnings from us. He apparently spent his whole time in Alaska in Jail. No. 230, who is J. Varela, does not appear on our payroll. And No. 107, Joe Rendon does not appear on our payroll. [162]

We have three Rendons, I believe, on this list.

Then, on the shorter list entitled Woodriver Personnel of 1939 Season, No. 14, Charles Roth Wyler worked for the Company in San Francisco prior to going to Alaska, and he worked for the Company in San Francisco upon his return from Alaska and he worked sometime in September, 1939; and since that date he has worked elsewhere in San Francisco or California. No. 34, Mike Martin, has, likewise, been employed in California since the end of the 1939 season. Otherwise, the list checks with our payroll, except for some minor errors, apparently in spelling.

Mr. Resner: So far as No. 14, Charles Roth Wyler, and also Mike Martin, No. 34, the point you are making is that they weren't employed by you in Alaska but they also worked in California after they returned from Alaska?

Mr. Oliver: Yes, Charles for us and Mike Martin for somebody else.

Mr. Resner: They didn't work during April of this year or May this year?

Mr. Oliver: Not for us. I do not know whether they are working for someone else. My understanding is they are working for someone else.

Mr. Resner: But they are not working for Alaska Salmon?

Mr. Oliver: No, they are not.

Mr. Resner: Of course, they wouldn't be eligible for benefits if they are working now under any circumstances.

(At 4:30 p.m. the hearing was adjourned to reconvene Wednesday, 9:00 a.m., June 19, 1940.)

EXHIBITS

Statement

Mr. Resner: Let the record show that Exhibit No. 1 is changed and the following appears as Exhibit No. 1: The letter from Anderson and Resner signed by George R. Anderson, May 11, 1940, addressed to the Alaska Unemployment Compensation Commission, regarding the claim of Frank L. Aragon, Social Security No. 571-09-8139, which is presently Exhibit No. 5. That is changed to No. 1. And, also No. 5, the letter to the Alaska Unemployment Compensation Commission [163] of May 14, 1940, signed by Sam Young, Secretary of Alaska Cannery Workers Union—that is changed to No. 1.

Let the record show further that the list of Claimants numbered 1 appears as follows: Sheet 1 begins with the name Sing Tom, No. 567-16-7833; Sheet 2 first name is Clarence Davis, No. 566-03-1697; Sheet 3 first name is Chan D. Tsue, Social Security No. 561-05-8489; Sheet 4 first name is John Harris, No. 566-12-5381; the first name on Sheet 5 is Tiburcio Y. Vios, No. 566-16-1781; Sheet

6 first name is Yen Shoo, No. 571-01-6641; Sheet 7 is Joe Corry, Social Security No. 572-03-0323; Sheet 8 first name is Frederick Cordova, No. 566-14-6010; Sheet 9 first name is Toshizo Asari, No. 547-03-2338; Sheet 10 first name is Chi Saw, No. 566-16-7832; Sheet 11, Maximo Lucerna, No. 566-05-0556; Sheet 12 first name is Wilbur Burton, No. 566-01-2044. All of those, then, become Claimant's Exhibit No. 1. And in this regard, Mr. Examiner, I would like to have this case entitled Frank L. Aragon, and all the other Claimants whose names appear on the sheets; and, also, the Alaska Cannery Workers Union No. 5 of San Francisco on behalf of these Claimants.

Then Exhibit No. 2, Claimants Exhibit No. 2, which was formerly No. 1, is changed to No. 2; and it is the letter from the Alaska Salmon Company of April 30, 1940, signed by Mr. Fleager, to the Alaska Cannery Workers Union. (Indicating.)

And I am making former Claimant's Exhibit No. 14 Exhibit No. 2 (a), being the list of employees of Alaska Salmon Company during 1939; and there are three sheets to this 2 (a)—the first one, Sheet No. 1, carries the first name Vincente Rendon; Sheet 2 the first name is Manuel Molix; and Sheet 3 the first name is Albert Sanchez. In other words, there is no longer any No. 14. No. 14 has become 2 (a).

All the others remain the same. [164]

Wednesday Morning Session

(At 9:00 a.m., June 19, 1940, the hearing was reconvened by Referee Henry Roden.)

AUSTIN K. TICHENOR,

The Alaska Packers Association, 111 California Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Madison:

Q. Mr. Tichenor, you are an officer of the Alaska Packers Association, are you not?

A. I am.

Q. What office?

A. Vice-President and General Manager.

Q. And you have held this office for sometime past?

A. I have.

Q. And you are the man, the executive of the organization, most familiar with the expedition that yearly takes place to Alaska? Or has for a number of years past up to this year?

A. I am.

Q. Now, Mr. Tichenor, you are the man representing the Alaska Packers Association who Mr. St. Sure referred yesterday to in his testimony?

A. I am.

Q. And you were in during the season over negotiations from sometime in March until sometime in May? You were the representative of the Alaska Packers Association with whom Mr. St. Sure conferred with regard to his negotiations with the union in connection with the trip to Seattle? Is that correct?

A. I was.

Q. Now, Mr. Tichenor, did the Alaska Packers Association at that time make provision for and did it intend to go in 1940 to Alaska?

(Testimony of Austin K. Tichenor.)

A. We did.

Q. And referring specifically to the earlier trip, the Chignik and Karluk trip, what steps were taken to prepare for the expedition and for the operation of the canneries in Alaska generally?

A. We set aside a vessel for that purpose, our fastest vessel that was capable of making that trip.

Q. Which vessel was that?

A. The Steamer Cherakoff. We also purchased supplies and outfitted to the extent of nearly four hundred thousand dollars. Those supplies are still on hand in our warehouse here open for inspection, if anybody desires to see them.

Q. What are the nature of the supplies?

A. Cans, can ends, lumber, fiber boxes, caterpillar engines, stationary engines, and various machine tools, and so forth, that we might have difficulty in getting, or there might be some delay in getting. [165]

Q. Now, in connection with preparing for an operation of this character is it correct to say that certain of the materials and supplies have to be purchased sometime ahead because of the difficulty of getting them, while others particularly perishables, particularly food, can be purchased within ten to fifteen days before sailing?

A. That is very true.

Q. Now, you spoke about cans and can ends. You bought those in considerable quantity for the operation this year? Is that correct?

(Testimony of Austin K. Tichenor.)

A. That is correct.

Q. And that material is on hand here in San Francisco Bay Area? A. It is.

Q. And in addition to that I assume that the Company has a certain amount of canned material in Alaska which could be used to augment the materials which are here, if you had had an expedition this year?

A. We have, both in Central Alaska and Bristol Bay also.

Q. Did you purchase any piling this year for use in connection with your fish traps?

A. We did.

Q. And did you purchase that in substantial quantities?

A. Yes, quite substantial quantities.

Q. Did you purchase lead for nets for this year?

A. We purchased lead and purchased linen nets.

Q. Did you purchase some Clark Truck Tractors? A. We did.

Q. And those were purchased for use in Alaska?

A. They were purchased for use in Alaska and are on hand here now.

Q. And aren't usable in your business in any other way except in connection with your Alaska Fishing Trip? A. That is all.

Q. When were those purchased, if you can recall?

A. They were purchased—the tractors were purchased, I imagine, in late March.

Q. In late March of 1940?

(Testimony of Austin K. Tichenor.)

A. 1940, yes.

Q. Did you purchase motors for can lines and switch boards, and so forth?

A. We did. We purchased what they call all the runways that connects up with modern cannery machines.

Q. And those were purchased in 1940 shortly prior to the time you would have gone on your trip if you could have gone?

A. They were, yes.

Q. Did you purchase boxes, shooks?

A. Yes, we ordered box shooks, but we didn't take delivery on them.

Q. You were able to cancel the order when you found you couldn't go? A. Yes. [166]

Q. Did you purchase lumber?

A. We did, and lumber is now on hand in our shipyard in Alameda and some of the various lumber yards we didn't take delivery on but have had to pay for just the same.

Q. Now, I think you spoke you had taken nets and, I assume, nets would include linen and cotton webbing?

A. It would include linen Gill nets for Bristol Bay and all the cotton webbing necessary for hanging traps in Central Alaska.

Q. And those were purchased this year with the idea of going to Alaska? A. This year.

Q. Did you purchase a fish scow?

A. We had a scow built on Puget Sound for Chignik, yes.

(Testimony of Austin K. Tichenor.)

Q. To be used in the operations of 1940?

A. Yes.

Q. Did you purchase some laundry machinery?

A. Yes, quite a lot of laundry machinery to be installed in the different laundries asked for by the various unions. And it had been purchased and we have it on hand.

Q. That was purchased in 1940, was it, for use in connection with the 1940 operations?

A. That was purchased in the Spring of 1940.

Q. Did you purchase donkey boilers?

A. Yes, we purchased a couple of them.

Q. For use in the 1940 operations?

A. Yes.

Q. Did you purchase a winch from the Robinson Engineering Company? A. Yes.

Referee Roden: Have you a list of those items, Mr. Madison?

Mr. Madison: I will ask this question.

Q. Did you purchase winches from the Robinson Engineering Company? A. Yes.

Q. Did you purchase five caterpillars? And did you purchase a substantial quantity of fuel oil? And Rope? And quantities of blankets from the Utah Woolen Mills? In the Spring of 1940? And all also for the use of the expedition of 1940 if you could have gone? A. Yes, we did.

Q. And those materials are on hand and available for anybody to examine who wishes to?

A. They are.

Q. Now, Mr. Tichenor, you spoke of having one

(Testimony of Austin K. Tichenor.)

vessel ready and available to go, the fastest vessel ready and available to go to Central Alaska, is that correct? A. That is correct. [167]

Q. Did you have vessels available to go to the Bristol Bay operation?

A. We had two others available for Bristol Bay.

Q. And were the vessels which you had available ample to carry your men and cargo to conduct the operations in Alaska this year?

A. They were very ample.

Q. Did you charter other vessels of your fleet which you have used in the past for past expeditions to Seattle?

A. Did we charter additional?

Q. Other vessels that you have used in the past? I withdraw the question and ask you this question. Which vessels did you have available to go to Bristol Bay?

A. We had the Etolin, the Qekvichak, and Cherakoff on her return voyage from Central Alaska.

Q. In other words, your plan was to send the Cherakoff to Central Alaska and then to have her come back, and then she could go to Bristol Bay and carry additional cargo to help in that operation? A. That was our idea, yes.

Q. And you have two other major vessels in your fleet, do you not?

A. Yes, the Bearing and Delaroff, are vessels

(Testimony of Austin K. Tichenor.)

which have gone to Alaska in prior years?

A. They have, yes.

Q. And these vessels were chartered when?

A. They were chartered in early Spring, January and February, chartered out January and February of 1940.

Q. And by virtue of these charters they would not have been available to go to Alaska?

A. They would not have been available. We didn't figure on sending them to Alaska.

Q. And vessels you had remaining in your fleet, large and small, I think you have already testified to, were ample for the operation in Alaska?

A. They were ample, yes.

Q. Now, I want to introduce for the purpose of the record a list of the sailing dates of the Alaska Packers Association expeditions to Alaska in 1937, 1938, and 1939. I will show this first to Counsel.

Mr. Resner: These dates, Mr. Madison, you refer to are the days of different sailings to Bristol Bay? Three sailings to Bristol Bay, three different vessels?

Mr. Madison: That is my understanding. You can ask the witness that. [168]

I am just offering this, if your honor please, for the purpose of the background.

Referee Roden: What was the last Exhibit? BB, was it?

Mr. Madison: Double-E was the last one.

It will be Double-F, I think. (Indicating.)

(Testimony of Austin K. Tichenor.)

I think I better lay a slight foundation and ask the witness if this is a true and correct statement?

By Mr. Madison:

Q. Let me ask you, Mr. Tichenor if this Exhibit marked for identification Cannery Exhibit FF is a true and correct copy of the sailing dates upon which the Alaska Packers Association sent expeditions to Alaska to the states mentioned during years 1937, 1938, and 1939? A. It is, yes.

Q. Showing dates sailed up, dates arrived up, dates sailed down, and dates they arrived at—that is correct, is it not?

A. That is correct.

Q. I ask this be introduced as Cannery Exhibit FF.

(Received in evidence as Respondent's Exhibit FF.)

(Testimony of Austin K. Tichenor.)

RESPONDENT'S EXHIBIT FF

SAILING AND ARRIVAL DATES—ALASKA PACKERS ASSOCIATION'S
EXPEDITIONS TO ALASKA—1937, 1938, 1939

Year	Stations	Sailed Up	Arrived Up	Sailed Down	Arrived Down
1939	Karluk	April 23	April 30	September 3	September 10
	Chignik	April 23	May 2	September 23	September 29
	Bristol Bay	May 25, 26, 31	June 3, 4, 8	(July 30, (Aug. 3, 6, 9 Sept. 19	Aug. 6, 12, 14, 17
1938	Karluk	May 30	June 6	Sept. 19	Sept. 26
	Chignik	May 30	June 11	Sept. 9	Sept. 26
	Bristol Bay	May 29, June 1-2	June 10, 12	Aug. 10, 13	Aug. 18, 22, 23
1937	Karluk	Apr. 17	Apr. 24	Oct. 7	Oct. 14
	Chignik	Apr. 17	Apr. 26	Sept. 24	Oct. 1
	Bristol Bay	May 13, 15, 18, 23	May 23, 24, 26, 31	Aug. 7, 8, 9	Aug. 14, 16, 17, 18

(Testimony of Austin K. Tichenor.)

That is all, Mr. Tichenor.

Cross Examination

By Mr. Resner:

Q. Referring to these supplies, Mr. Tichenor, you purchased for the 1940 season, as you said. These are supplies you can use next season, are they not?

A. Yes, they can be used next year.

Q. You expect to use them next year, do you not?

A. Well, naturally, if we go to Alaska next year we would use them, yes.

Q. Well, you expect to go to Alaska next year, don't you? A. We hope so.

Q. Now then, directing your attention to last season, how many vessels did you use during the last season for voyages to Alaska?

A. 1939 we used all vessels except the Bearing. I don't think we used the Bearing in 1939, did we George?

Mr. Oliver: All our vessels except the Bearing.

By Mr. Resner:

Q. And that means how many, Mr. Tichenor?

A. That would mean three major vessels and the motor ship Quejack. I am not referring to the tenders like the Cannack and Kadiack and those, but the major vessels. [169]

Q. In other words, this year you expected to use one less major vessel than you used last year?

(Testimony of Austin K. Tichenor.)

A. No, we expected to use two. Yes, one less than last year.

Q. For instance, you say you didn't use the Bearing last year. You chartered that last year and this year, and you planned not to use the Delaroth this season?

A. We planned not to use the Delaroth this season.

Q. How many men do you generally use in the San Francisco operation in your Alaska plant?

A. Well, if we are working to capacity, including Central Alaska and Bristol Bay, we use about 2,200 people, I imagine.

Q. Out of San Francisco?

A. Out of San Francisco.

Q. Cannery Workers, that is?

A. That is everybody.

Q. And had you planned to use that same amount this year had you made the expedition?

A. No, this year owing to the restrictions by the government we were to use about 66 2/3% of our people in Bristol Bay. We had planned to use approximately the same number of people in Central Alaska.

Q. Now, could you reduce that to figures, Mr. Tichenor? Let us direct your attention first to Central Alaska. How many men would you have used this year had you gone?

A. In Central Alaska?

Q. In Central Alaska?

(Testimony of Austin K. Tichenor.)

A. I think we would have used a similar amount of people that we did last year in Central Alaska.

Q. Approximately how many cannery workers does that represent?

A. In Central Alaska you are talking about?

Q. Yes.

A. About 275, I imagine. I am speaking from my opinion. About 275, I imagine.

Q. Yes, all I want is as to your best knowledge. Do you know how many you used in Central last year? Cannery Workers? How many did you use in Central Alaska last season?

A. I think we used about the same. I am not quite sure.

Q. Directing your attention to Bristol Bay this year, you say you plan to use about two thirds of what you used last year in the Bristol Bay operation?

A. About two thirds, yes.

Q. And how many did you use in Bristol Bay last year of cannery workers?

A. Let's see, I will have to add up the line and I can tell approximately.

Mr. Madison: Don't you fellows know? [170]

Mr. Resner: Yes, we know.

Mr. Madison: Well, what does the Secretary have it? Mr. Tichenor doesn't know off hand. Mr. Woolf?

Mr. Woolf: Nine hundred to a thousand men.

A. (Mr. Tichenor): I think about 940 in Bristol Bay.

(Testimony of Austin K. Tichenor.)

Mr. Woolf: Nine hundred to a thousand in both operations? A. (Mr. Tichenor): Yes.

Referee Roden: That is in Bristol Bay and in Central Alaska.

Mr. Madison: Mr. Woolf thinks it is between nine hundred to a thousand for the two operations together.

Mr. Woolf: All operations of this one company. That is correct.

Mr. Madison: Supposing the records show the answer is 880 in Bristol Bay? This is for last year, as I understand it. And 275, we will say, in Central Alaska?

Mr. Woolf: It will run around a thousand men for the one company.

By Mr. Resner:

Q. Then, to sum this thing up, for Bristol Bay you plan to use two thirds of the Alaska Cannery Workers crew? At Bristol Bay this year?

A. The idea was.

Q. That is, from San Francisco, Mr. Tichenor?

A. Yes. The fishing effort had been curtailed by the government 33 1/3%, and we would, naturally, have to reduce our outfit about 33 1/3%.

Q. Can you tell me how many lines you planned to run in Alaska this season from San Francisco?

A. Bristol Bay?

Q. First directing your attention to Bristol Bay.

A. Well, we planned to use about one third less

(Testimony of Austin K. Tichenor.)

than what we had the previous year. Now, I just don't recall the number of lines we worked the previous year.

Q. And the same is true, of course, of Central Alaska? A. No.

Q. In Central Alaska you planned to use what you did in last year? A. Yes.

Q. Directing your attention to Central Alaska, you have traps at that operation, have you not?

A. Yes, we have.

Q. Those traps are in operation this season, are they not?

A. They are not in operation this season.

Q. Not for your company, Mr. Tichenor, but aren't they leased [171] or used by the Pacific-American.

Mr. Madison: If your honor please, I don't see what relevancy this has to the thing. This may be in the manner of a business secret to the Alaska Packers. What relevancy has it to this?

Referee Roden: Confine yourself to the fact whether or not they are being operated by anybody.

By Mr. Resner:

Q. Are the traps being operated by anybody, Mr. Tichenor?

A. They are being operated under a form of lease to a man named Hofstad, and under an arrangement with the Alaska Fishermens Union at Seattle, I believe. I don't know the details.

(Testimony of Austin K. Tichenor.)

Q. In the Central Alaska operation, Mr. Tichenor, all you use is trap fishing there; isn't that correct?

A. No, it is not. We use trap fishing, and we use beach seining, and we use what they call set-netting or set-gill-netting—it is three different methods of fishing.

Q. With regard to that fishing, though, all of those traps and set nets have been leased out to another operator for this season?

A. We haven't leased any of the set-netting sites at all. The beach seine at Karluk has been turned over to the natives, gratis, to let them go ahead and fish in any way they see fit. And they will get the income from it, whatever it may be. We loan them the gear without any expectation of return.

Q. But then the traps, of course, have been leased out, as you previously testified?

Referee Roden: We have had that several times now. Let's get along, gentlemen.

By Mr. Resner:

Q. With regard to the canneries at Bristol Bay, what particular canneries did you plan not to operate this year?

A. Well, a great deal depended upon the arrangement we would have been able to make with labor, and we didn't intend not to operate any of our canneries. There are two locations for instance, in Bristol Bay. One is Ugasik, what we will call a one-line cannery.

(Testimony of Austin K. Tichenor.)

Q. Did you plan to operate that one-line cannery?

A. Wait until I get around to that please! And then there is Egogik—They work together—which is a three-line cannery. Now then, we had in view to operate Egogik on what they call a two-line basis; however, we would [172] possibly have fished in Ugasik and taken Ugasik fish to Egogik, with the result we would start the third line Egogik but not operate any lines in Ugasik. However, the same number of souls would have been employed.

Q. Well, then, how many canneries do you have at Bristol Bay, generally manned by workers from San Francisco?

A. We have seven canneries in Bristol Bay.

Q. How many of those are operated by cannery workers in San Francisco?

A. They are all operated from San Francisco. In fact, all our canneries all over Alaska are operated by San Francisco and by San Francisco Cannery Workers.

Q. Would you give us the names of those canneries, Mr. Tichenor? And you might have to spell them so the Reporter could get them, because they are odd names.

A. Well, we will take them geographically: Nshagak; Kvichak, Diamond-J after that; Kvichak, Diamond-X; and Naknik, Diamond N; Egegak, Diamond-E; and Ujshik, Diamond-U. Now you understand, there are other canneries we have that

(Testimony of Austin K. Tichenor.)

we do not operate; but we keep them as in the case of disaster to start them up.

Q. This is all in Bristol Bay, now, we are talking about?

A. These are the canneries we usually operate in Bristol Bay. We have other canneries.

Q. I am just talking about the Bristol Bay operation. A. That is all.

Q. Directing your attention to the canneries whose names you have just given can you give us your best judgment of what your plans were as to which of these canneries you planned not to operate this year?

Mr. Madison: He testified he planned to operate all of them.

Referee Roden: Yes.

Mr. Resner: Let the witness answer, Mr. Madison.

Mr. Madison: Don't mislead him by the question, deliberately mislead him, and expect us not to object.

Mr. Resner: I am not trying to mislead the witness, and I am sure Mr. Tichenor is quite able to take care of himself.

Referee Roden: I think it is too much repetition. That is the only objection I have.

Mr. Resner: The point is this, Mr. Referee, obviously there was curtailment that had nothing to do with the labor dispute; [173] and what I wanted to do was get those canneries which were not go-

(Testimony of Austin K. Tichenor.)

ing to operate so those men that worked there last year are unquestionably entitled to benefits.

Referee Roden: The witness has testified the Company expected to operate them all, isn't that right?

Mr. Resner: I don't know. I want to find out whether or not that is the case.

Referee Roden: You asked your question once and he said he was going to operate them all.

Mr. Resner: Are you going to permit me to develop this line of questions?

Referee Roden: Go ahead. I am trying to have you bring out every point you have, but there is no use in asking the same question a dozen times.

By Mr. Resner:

Q. That is what I am trying to bring out. Let's try this one point with respect to these Bristol Bay Canneries you have just mentioned, are any of those canneries that you plan not to use at all this Spring?

A. We hadn't decided fully on that. As I told you before, there was a 33 1/3% reduction in fishing efforts that was inaugurated by the government. Now, we were undecided whether we should cut out a cannery, say like Diamond-X, entirely or work both canneries on skeleton form. A good deal depended upon the final arrangement made with labor here.

Q. This question of the government curtailment, of course, entered into the matter of whether or

(Testimony of Austin K. Tichenor.)

not you were going to consummate this years agreements with the Cannery Workers Union.

A. What is that again?

Q. This question of the government curtailment, of course, played an important part in whether or not your company planned to consummate an agreement with the Cannery Workers this year in San Francisco?

A. No, I don't think the government regulations would have affected our activities in Alaska except in that reduced form of 33 1/3%. What would affect us more than anything else vitally was the arrangement with labor.

Q. Isn't it true, of course, this curtailment was the real basis or one of the bases for the San Francisco Packers requesting the Union to sign the 1939 Seattle Agreement rather than offering to the union the 1939 San Francisco Agreement? Do you understand [174] the question, Mr. Tichenor?

Let us talk for the Alaska Packers. This curtailment played an important part in your decision and in your offering to the cannery workers the 1939 Seattle Agreement rather than the 1939 San Francisco Agreement?

A. I don't really know what agreement we offered to the cannery workers here. I wasn't handling that end of it, as you know. That was handled through this Alaska Salmon Industry. I don't know what offer they did make.

Q. You turned your negotiations over to Mr. St.

(Testimony of Austin K. Tichenor.)

Sure and Mr. Moore, representing the Alaska Salmon Industry?

A. I conferred with them from time to time concerning the meetings, but I didn't keep in touch with the details. I left that to them.

Q. They reported back to you the progress of the negotiations, didn't they?

A. Not very often, no.

Q. Had you delegated to them complete authority to sign on whatever terms they saw fit?

A. We instructed them, so far as our company was concerned, that we could go to Alaska under certain conditions—wages and working conditions.

Q. And what were those working conditions and wages?

A. That is a very long winded proposition. In fact, it was the conditions which, as I understand it, that this Mr. St. Sure and his associates presented to you people. Now, whatever they were, those were them. But I can't recall them.

Q. Well, the testimony here, and I suppose you heard some of it, Mr. Tichenor, were the negotiators for the Alaska Salmon Industry offered to the Cannery Workers Union the 1939 Seattle Agreement, or the 1940 Seattle Agreement. That they did not offer to our local Cannery Workers Union the 1939 San Francisco Agreement, which had higher wage scales and better conditions. Now then, directing your attention—you agree with that, Mr. Madison? That statement of fact?

Mr. Madison: The evidence speaks for itself.

(Testimony of Austin K. Tichenor.)

Mr. Resner: I don't want to mislead the witness.

Mr. Madison: I appreciate that.

By Mr. Resner:

Q. Now, then, you instructed Mr. St. Sure and Mr. Moore, then, that they should not offer to the Cannery Workers of San Francisco a renewal or a re-execution of the 1939 San Francisco Agreement, did you not?

A. You say we did or we did not? [175]

Q. I am trying to find out whether you did or did not?

A. I believe we did. We offered a renewal of the 1939 Agreement.

Q. I am speaking now of the San Francisco Agreement; you know, the San Francisco and Seattle 1939 Agreements were different, had different wage scales, and the question I am trying to find out is whether you Alaska Packers instructed your negotiators to offer to the union for 1940 the same contract that you had with the union in San Francisco in 1939?

A. I am not quite sure. I couldn't answer that positively. There is so much water passed over the dam since then. But I thought that we were satisfied with the cannery workers to go to Alaska under 1939 agreements with certain modifications. Now, what those modifications were I don't know.

Q. And you are referring now, of course, to the San Francisco.

A. But the modifications were quite an impor-

(Testimony of Austin K. Tichenor.)

tant part of the offer made to the cannery workers.

Q. And you are referring now, of course, to the 1939 San Francisco agreements?

A. The 1939.

Q. Well, then, of your own knowledge you don't know whether your negotiators, Mr. St. Sure and Mr. Moore, offered to the San Francisco Cannery Workers the 1939 San Francisco agreements?

A. I was not there when the offer was made, no.

Q. You don't even know whether such an offer was made?

A. I don't know what offer they made, outside of what they reported to me. They reported they had offered a certain agreement, whatever it was at that time; I can't recall the details now.

Q. The sailings for Alaska generally from year to year for the Bristol Bay operations commence around the latter part of May, do they not, in San Francisco?

A. The last five or six years the departure of the fleet has been so much delayed owing to labor difficulties with various organizations that our sailing time was quite late. We should sail with modern steamers that we operate now not later than about the 14th or 15th of May to perform our work and get our canneries ready for fishing operations in Bristol Bay, which we are talking about.

Q. How long does it take you to outfit a ship with perishables?

A. Well, it takes ordinarily about two weeks of certain supplies; naturally, you must have some

(Testimony of Austin K. Tichenor.)

of them on hand that you get from the East, like linen nets come out from Philadelphia, as an instance.

Q. Well, you had those on hand this year, according to your testimony?

A. Well, we had bought them on hand. [176]

Q. But it would?

A. But it would take ordinarily two weeks to load her, get the people on board, and get away from here.

Q. Did you give Mr. St. Sure or Mr. Moore any instructions on the deadline for the signing of agreements on the Bristol Bay operations?

A. I don't like that term "deadline" in the first place, but we told Mr. St. Sure—we gave him a date after which it would be impossible for us to outfit and get away.

Q. Can you tell us what that date was?

A. Bristol Bay?

Q. Bristol Bay from San Francisco?

A. I think it was about the 3rd of May. I have that impression, 3rd or 4th of May.

Q. Now, on this matter of wage claims, in previous years, that is prior to this year, you have taken up with the union or the union has taken up with you the question of disputed wage claims extending over from the prior season? Isn't that a fact?

A. Well, we have at times discussed disputed claims, yes; not as much as we had presented to us this year, but there has been instances, yes.

(Testimony of Austin K. Tichenor.)

Q. Directing your attention to the 1939 season, before the 1939 agreement was signed with the union there were wage claims which were taken up with the company and settled as between the company and the union, isn't that true?

A. I believe so, yes.

Q. And after wage claims were out of the way then the contract was negotiated and signed?

A. No.

Q. How did it happen?

A. Well, we have often arranged our contract with various organizations and our working agreements and wage disputes were held in abeyance—and in the Fishermens Union, for instance, as high as two or three years.

Q. But the fact there have been wage disputes or claims which have been a part of the negotiations is not an unusual thing?

A. I don't remember any up until this year. I don't know of any instance where the wage dispute of previous years was brought in as a basis for settlements on the 1940 operations.

Q. I want to ask this. Last year, 1939, weren't wage claims got out of the way first before contracts were signed?

A. Not particularly.

Referee Roden: I don't think that is very important.

Mr. Resner: The only point is Mr. St. Sure tried to make a point of the fact the wage claims the union was presenting [177] was one of the real

(Testimony of Austin K. Tichenor.)

stumbling blocks to the union agreements. That the union wouldn't sign until they were out of the way. And I don't think it is important, either. I just wanted to develop the fact they weren't important.

By Mr. Resner:

Q. Mr. Tichenor, last year Alaska Packers, your company, negotiated your contract directly with the Alaska Cannery Workers Union, did it not?

A. Yes, and with all other organizations.

Q. And with all other organizations. I believe it was you who worked out the agreements with the union committees, as a matter of fact?

A. Yes.

Q. And that is the way you had done it in years prior to 1939 since you had been dealing with labor organizations?

A. For many years.

Q. This year negotiations were turned over to Mr. St. Sure and Mr. Moore?

A. Yes.

Q. Was there any particular reason you could give us at this time why that was done this year?

A. I imagine they thought I was too easy. I don't know what the reason was. I think our people thought by trying to negotiate a coastwise agreement, a uniform agreement all over the Pacific coast which, I believe, is the natural way of doing this thing. I think it obtained better results, not only for ourselves but for labor.

Q. I agree with you the union wanted to negotiate a coastwise agreement, too; of course, you un-

(Testimony of Austin K. Tichenor.)

derstand they didn't want to give up anything they had here in San Francisco. At least, they wanted that as a minimum from which to start.

A. You mean, the Cannery Workers Union?

Q. The Cannery Workers Union is what I am talking about.

A. Well, I will never forget the experience I had with 1939. We worked along with that idea in view and our friend George Woolf, here sitting alongside you, went to Seattle with that full intention and came back and had entered into an agreement that was coastwise; but, when he got back here the boys, he claim, repudiated it. And they didn't do a thing to us except Hiterlize a little bit and boost it up. Probably that is one of the reasons they wouldn't let me negotiate this agreement this year, and another reason why these boys here are out of employment. That is the way it looks to me. [178]

Q. Well, regarding next year, can you say at this time with whom you expect to negotiate next year's cannery agreements?

A. You say?

Q. I am talking about 1941?

A. I don't know. That is looking far way ahead. I always got along pretty well with these fellows.

Q. I know. They say that, themselves, Mr. Tichenor. Can you tell us how much of the pack you have on hand this season? Alaska Packers of last year?

A. Now?

Q. Yes.

(Testimony of Austin K. Tichenor.)

A. Well, we haven't an abnormal amount. I think that we have less on hand now than, taking a cycle of six years, we have less on hand now than we had for the sixteen years say, about April 1st when we take our inventory; we haven't an excessive amount on hand.

Q. Your only operations are from San Francisco. You don't have any operations out of Seattle, do you? A. No, we do not.

Examination

By Referee Roden:

Q. The amounts on hand now, Mr. Tichenor, is slightly in excess of what they had on hand a year ago, isn't it?

A. I don't think so, Mr. Director. I think what we have on hand now is slightly less than what we had a year ago.

Q. I was reading one of the trade journals on my way down here and was rather struck by the claim made in it.

A. Yes, you are very right. It is a trifle in excess of what we had in 1939.

Q. Yes. That is what I mean.

A. However, it isn't in excess of what we had in 1938 or what we had in 1935, those years. It isn't an excessive amount for us to carry.

Q. At the time these negotiations were going on what was the outlook for the future in the canned salmon market, particularly with reference to the reds?

(Testimony of Austin K. Tichenor.)

A. Well, Mr. Roden, this was a year, 1940, for the salmon canner to operate if he could, with the war clouds gathering in Europe and without an excessive carry-over. The markets were fairly clear and all grades of salmon. This was a year we should operate.

Q. Including the reds?

A. This was a year we should operate, and we were anxious to operate, so far as I am concerned.

Referee Roden: Go ahead, Mr. Resner.

Mr. Resner: I think that is all.

Redirect Examination

By Mr. Madison:

Q. I just want to ask one question. Mr. Resner brought up the question of your leasing traps and of equipment in Alaska. [179] Now, in regards to any leasing of traps and equipment in Alaska, is it or isn't it true that what leasing arrangements you made were all made subsequent to the time when it became obvious here that you couldn't avoid this trade dispute and couldn't go to Alaska?

A. Oh, yes.

Mr. Madison: That is all.

Recross Examination

By Mr. Resner:

Q. One more question. This year you had a different way of making your cans or different type of can than last year, did you not, Mr. Tichenor?

A. Yes. That is, we endeavored to install this what they call the modern can making machinery. In

(Testimony of Austin K. Tichenor.)

other words, the Alaska Packers Association for years have been their own can makers. This year we were going to obtain collapsible cans, which we did, in order to compete with our competitors.

Q. In other words, you in former years had made your cans on the grounds in Seattle, at Alaska?

A. On the grounds. In that way we were able to offer a longer term of employment to these boys than we would with the collapsed cans.

Q. That is right. Last year the working season for the Cannery Workers would have been about three weeks more. That is, making of cans up there would have taken three weeks more than this year?

A. I imagine so.

Q. In other words, Mr. Tichenor, that would have or could have delayed your departure an additional three weeks over previous years?

A. It would after this year, but this year in making those installations we were anxious to get away early.

Q. But this year it could have, at least, delayed your departure three weeks and you could have still carried on your operations there and completed your pack?

A. No, I wouldn't say that. For the installation of this machinery it would be necessary, if anything, to get away a trifle earlier than under ordinary conditions. Next year, possibly, we could possibly afford to delay a little bit.

Mr. Resner: That is all. Thank you.

MR. G. B. PETERSON,

64 Pine Street, San Francisco, California, being
duly sworn testified as follows:

Direct Examination

By Mr. Madison:

Q. What is your name, please?

A. G. B. Peterson.

Q. And your address?

A. 64 Pine Street, San Francisco. [180]

Q. And your occupation?

A. General Manager of the Red Salmon Canning
Company.

Q. Mr. Peterson, are you the Executive of the
Red Salmon Canning Company who has had charge
of the expeditions for Red Salmon Canning Com-
pany to Alaska in prior years?

A. Since 1934.

Q. And you are the Executive of the Red Sal-
mon Canning Company who had most to do with
the arrangements for going north this year?

A. That is right.

Q. Now, Mr. Peterson, did the Red Salmon Can-
ning Company plan if they could avoid this labor
dispute and make proper arrangements on going
to Alaska this year?

A. We made every effort possible to do so.

Q. As I understand it, you operated at Bris-
tol Bay only?

A. That is correct. We have two canneries there
that we operate.

(Testimony of G. B. Peterson.)

Q. And you have no operations in Central Alaska at all?

A. No, none whatever. Nowhere else.

Q. Now, Mr. Peterson, what vessel has it been your custom or vessels has it been your custom to use in connection with your operations of the past?

A. In the last several years we have operated two vessels: The American Star, a large one; and the Madrona, which is a very small one. Both leave San Francisco, or have left, each Spring for Bristol Bay.

Q. Now, Mr. Peterson, did you have opportunities in the Fall of 1939 and Spring of 1940 to make profitable charters on these two vessels?

A. I don't recollect in the Fall, but we did have a number of opportunities in the Spring.

Q. Of 1940? A. 1940, yes.

Q. To charter these vessels on a very favorable basis? A. That is right.

Q. And that is because, I assume, of a shortage of vessels generally throughout the world during the European war? A. Yes.

Q. Did you accept any of those charter offers?

A. No, we did not.

Q. Why not?

A. About January our Board of Directors instructed me not to entertain any charters or do anything that would interfere with the 1940 operations, that is, the salmon canning operations. And if we chartered in January or thereabouts it was

(Testimony of G. B. Peterson.)

a danger the boat might be held up for one reason or another and thereby delay [181] or prevent our expedition. We did entertain one charter where we offered the boat, but we offered with the stipulation the person wanting to charter it, because it was in the nature of a salvage job, that they be back, I think it was, by the middle of April. And we, as part of the terms, insisted they put up, I think, a hundred thousand dollar bond, or something like that, for any delay at all. But that was one of the reasons the charter was not accepted.

Q. Now, as I understand, when you say it would interfere with your operations you mean interfere with the trip to Bristol Bay from San Francisco in May of this year? A. That is right.

Q. Now Mr. Peterson, since the expedition failed to sail, say, after the date given as May 3rd or given on May 3rd or about May 3rd, as the last date upon which the sailing could take place, have you made alterations in your ship with a view of possibly making it available for other runs?

A. Yes, beginning immediately after the 3rd, or a few days after, why, we started putting the boat in condition to charter. These boats, as you probably know, are specially adapted for our trade. At least, our particular boat is; and I think it is true of the Alaska Packers as well. We have a lot of these Standey Bunks, and other equipment aboard, which makes them a passenger ship in the terminology of the U. S. Government, but they are

(Testimony of G. B. Peterson.)

not a type of vessel that is readily charterable. At least, our boat is not. And it means quite a bit of change in order to prepare it for chartering as a freighter. We have since put the boat in that shape, but we did not do anything until subsequent to April—I mean May 3rd.

Q. In other words, the changes to make the boat available for other than the Alaska Fishing Industry voyage have all been made subsequent to May 3rd? A. That is right.

Q. And nothing was done to interfere with the vessel being hundred percent available until after May 3rd?

That is true. And it is even further than that.

For instance, we filled it up with oil, which is peculiar to our industry in Alaska because we use the fuel oil not only on the ship as fuel oil but we take it ashore and use it in our canneries. And we filled up with this particular type of fuel oil, which costs more and is a thinner type,—I think, that would be the easier way to describe it. It costs more money, but it flows easier; and up in Alaska where it is cold the flow is, of course, restricted by the cold weather. If we were going to fill the [182] boat up for a normal charter we would fill it up with what is known as Bunker-C Fuel Oil, which is a cheaper but a better oil, for the freighter. That oil is still in that ship and we will lose money when we charter it, if and when.

Q. During the winter did you spend money get-

(Testimony of G. B. Peterson.)

ting the quarters for the crew, for the fishermen, ready?

A. Several of the unions went on board our ship and asked us to make changes, which we did for that particular voyage. Some of the work that we did on board, painting and what not, we would not have done if we had contemplated chartering it as a freighter instead of operating in the salmon business.

Q. Did you remove salmon stored so as to make it available to Alaska? A. We did.

Q. And during April did you employ men to assist in the purchase of supplies for the Northern Alaska trip?

A. Yes. That was two reasons. One was we, of course, wanted to get everything done expeditiously, but when the deadline was set, as you have used it here,—our organization being somewhat smaller than the Alaska Packers has to take a little more time. We haven't got the force that we can throw into the job. So we engaged the services of another man. We were fortunate to get one of the Alaska Salmon Company's men to come over so it would expedite our departure in order that we could get ready a little faster than normal. We would rather have had a date earlier than May 3rd, as I think Mr. St. Sure testified to yesterday.

Q. Did you prepare the electric Baker on the American Star to be used in transporting all these men for cooking meals for them?

(Testimony of G. B. Peterson.)

A. Yes. That would not have been done just to charter.

Q. And that was done during the Spring of this year? A. Yes.

Q. Now, in regards to the proposed trip to Alaska, what would you say about the purchase of supplies? You have heard Mr. Tichenor's testimony here. Did you purchase the supplies that he purchased, in substantially the same way?

A. We went ahead on the definite assumption we would go to Alaska this year and did everything necessary which should be done or had to be done prior to May 3rd. When May 3rd passed and there were no agreements with the unions—in fact, I think there was one agreement, but it only involved two men. So far as we were concerned. That is the Blacksmiths Union. We saw there was no hope of going. In fact, we couldn't get our various supplies that we would [183] ordinarily buy in that time to go in any shorter time than had been set.

Q. Did you want to go to Alaska, your company?

A. Well, we had been operating for 45 years and the only time we haven't gone is when the government prevented an operation 1935; and our Board of Directors instructed me to prepare for an operation. We decided upon the outfitting for our two canneries; how many cases we would prepare to pack. We arranged credits at the bank for the amount of money we thought we might need.

(Testimony of G. B. Peterson.)

We drew up a complete budget as to any improvements that were needed, which were presented to the Board of Directors and approved. And the expenses were entered into. As a result of that we bought a power scow, which we now have; and it is in Seattle. It will be a loss to the extent of any use this year. We bought our nets. We bought our cans. We bought some casing and loading equipment in the East, which we now have and have paid for. We will have insurance and taxes and interest on that equipment. It won't be used. We ordered a new lift truck. Well, there are an infinite number of things we did buy which had to be bought prior to May 3rd if we were going to get out in time to make the season. Naturally, we didn't get ahead and buy anything that wasn't necessary to buy prior to that time because everything that we don't use is a loss in one way or another, if nothing else in insurance and taxes. But we were prepared and would have gone had agreements been made by the date set.

Q. I will show you here a statement that was prepared by one of your associates showing the dates in which the American Star and Madrona sailed in the years 1937, 1938, and 1939, the dates they left San Francisco and arrived at Alaska.

A. Bristol Bay, you might say.

Q. Leave Alaska and arrive at San Francisco.

And I will ask that this document be introduced in evidence and marked. I will ask you, first, if that is correct?

(Testimony of G. B. Peterson.)

A. I would say approximately correct, without having checked the accurate dates.

Mr. Resner: I have no objection to the portion of it dealing with when the ships sailed and arrived, Mr. Commissioner, but those portions stating below Subject and Exempt apparently means days the Packers says men are subject and exempt to the Act?

Referee Roden: Simply for the purpose of showing when the company ships sailed from here. [184]

Mr. Resner: We will tear off the bottom part, then?

Referee Roden: We will cross it off. (Indicating)

By Mr. Madison:

Q. Now, you stated so far as the applicable parts of that as to the sailings that is correct, Mr. Peterson? A. Approximately.

Mr. Madison: I will ask it be introduced and marked Cannery Exhibit GG.

A. I say I have no reason to doubt that it isn't correct.

RESPONDENT'S EXHIBIT GG

		RED SALMON			
Year		Lv—SF	Ar—NK	Lv—Alaska	Ar—SF
1939	American Star	5/27/39	6/ 6/39	8/ 6/39	8/15/39
	Madrono	5/27/39	6/ 6/39	8/ 7/39	8/16/39
1938	American Star	6/ 1/38	6/11/38	8/11/38	8/21/38
	Madrono	56/27/38	6/ 7/38	8/14/38	8/23/38
1937	American Star	5/20/37	6/ 1/37	8/ 8/37	8/18/37
	Madrono	5/ 8/37	5/21/37	8/ 6/37	8/17/37

(Testimony of G. B. Peterson.)

	Subject	Exempt
Cannery Workers 1939	6/ 7— 6/30 7/ 1— 8/ 1	5/27— 6/ 6 8/ 2— 8/15
Cannery Workers 1938	6/13— 6/30 7/ 1— 8/10	6/ 1— 6/12 8/11— 8/21
Cannery Workers 1937	6/ 2— 6/30 7/ 1— 8/ 7	5/20— 6/ 1 8/ 7— 8/18

Cross Examination

By Mr. Resner:

Q. Directing your attention to the curtailment this season, Mr. Peterson, how did that affect your company with the number of cannery workers you expected to hire in San Francisco.

A. Our company, being small, is in a little different position than the larger companies. The larger companies, of course, have several boats and several canneries. It is easier for them to curtail than it is for us. We can't cut a boat in half nor a cannery in half, or any part; so that we planned to go ahead on a full operation No. 1, because it either had to abandon the operations entirely or go on a full operation. And, furthermore, we knew that the Alaska Salmon Company was not going, and we felt that, therefore, there would be no infringement upon the government curtailment program even though we went on a full basis. And we so advised the U. S. Government we were going to do it at the meeting with the Commissioner. We had every intention of taking the same number of men this year that we took last year. In fact, among the cannery workers we planned to take a few more.

(Testimony of G. B. Peterson.)

Q. Then, you planned to take up the amount of fish which normally would have been allotted to the Alaska Salmon Company because they didn't plan to go this season, is that correct?

A. Not to that extent, because their operations is the equivalent of ours, and whether one third curtailment, of course, we would only absorb a minor portion of what they would normally take.

Q. When did you learn they planned to give up their operations?

A. Well, on about the same time that all of you were advised. As a matter of fact, when Mr. Fleager advised us officially, why, we felt it was the only decent thing to immediately notify the unions so they would not be under any delusion as to how many men were going to go or not going to go, and the men wouldn't be waiting around here for jobs [185] that wouldn't be offered them.

Q. That was around the latter part of April?

A. I don't know when it was, but I remember Mr. Tichenor and Mr. St. Sure and myself thought it was only fair to notify you fellows the same as we.

Q. I understand that thoroughly. I was trying to get you to recall the approximate dates you were so notified by the Alaska Salmon and I was just trying to find out if you recall that was sometime near the latter part of April, between the 20th and 25th?

A. I would say it was somewhere in April when it was finally and officially decided.

(Testimony of G. B. Peterson.)

Q. They would not make their expeditions this year?

A. Yes.

Q. On the subject of wage claims, I suppose, you argued with the union and settled wage claims in years prior to this one, have you not?

A. Oh, yes. We have had wage claims a good many years. We attempt to pay the men everything that we can liberally interpret they are entitled to; and, naturally, men may differ with us. Some of the ones we feel are obviously unjust we have refused to pay. That doesn't mean that at the last minute we haven't had a forcing of paying them irrespective of their validity, as we see it.

Q. But the dispute over wage claims in previous years has never prevented signing of an agreement for the expedition to Alaska?

A. Well, I don't think it has interfered so much with the agreement, but I remember the year before the Cannery Workers Union refused to send the remaining few men to our ship, which was ready and loaded and all the men on board with the exception of a few, but refused to send those few until we had paid certain claims.

Q. These supplies you describe are non-perishable supplies, are they not?

A. Which ones to you mean?

Q. The ones you described as having been purchased for the current season?

A. Well, I would have to have a definition of what you mean by non-perishable? Your cans may rust and are, therefore, valueless the following year.

(Testimony of G. B. Peterson.)

You are not certain of that. But anything may be outmoded. In other words, you take a definite risk whenever you buy anything that you are not going to use the current year.

Q. But you planned to use all this material and current equipment you bought this year in your 1941 operations, do you not?

A. We hope to, but there may be changes of many kinds which will make some of that equipment worthless to us. We are going to try to use it, certainly; but we have already disposed of a lot of that stuff, and some of it at [186] a material loss to us.

Q. But the rest of it you do expect to use next year? Barring the contingency?

A. If we can't sell it at a reasonable figure of what it cost us, we certainly will try to use it any way we can.

Q. You knew about the government's relations sometime ago?

A. We knew it about the first of January, I think, somewhere around in January.

Q. January of 1939, that is?

A. No, 1940. It is official. You can get the official report.

Q. Certainly. Well, this curtailment is a regular thing in the industry. Every five years or so some of the grounds are shut down. This is what they call a cycle year, isn't that correct?

A. Well, in 1935, as I testified, the government came out and said they were not going to permit

(Testimony of G. B. Peterson.)

any operation in Bristol Bay. That has been brought out by other witnesses. Some did operate, but we did not.

Q. Then, whenever this curtailment year appears, why, there is, of course, always the possibility there won't be an operation that year as you normally carry it on, isn't that true?

A. Well, of course, the theory of this curtailment in 1935 was so that the run in 1940 would be a good one; and, otherwise, there is no point in curtailment in prior cycles.

Q. The question, Mr. Peterson, is this. Whenever the government lays down a curtailment season the probability and possibility, as a matter of fact, exists there you won't operate at all because of that curtailment. Isn't that true?

A. Well, the only time we have not operated is in 1935 when the Government wouldn't permit any operation. But whenever they have permitted any operation we have always operated, no matter how it was curtailed.

Q. Didn't the fact this was a curtailed season enter into the fact you didn't arrive at agreement with the Cannery Workers Union this year?

A. Well, it certainly can't be claimed that way with us, because I just testified we were going under full operation.

Q. Last year, I believe, you negotiated a contract with the Cannery Workers Union for your company?

(Testimony of G. B. Peterson.)

A. Our situation is this. Being of a smaller size than the Alaska Packers; and, furthermore, they have to get off an operation earlier to Southern Alaska. They have taken the lead in all negotiations and, as a rule, the various unions come to us and excepting as to minor details, Manning Scales and particular housing conditions and things of that kind, why, the [187] agreement we sign is almost identical with that signed by the Alaska Packers Association.

Q. And this year you and the other two companies entered into this corporation and turned those negotiations over to the Alaska Salmon Industry, Inc.?

A. We turned it over to the Alaska Salmon Industry for various reasons brought out here. The main thing, we were losing money for several years and felt that couldn't go on, not only for our own protection but for the entire industry and the workers. We felt we were being forced to operate at a disadvantage over the Seattle operators and we had to sell our pack in competition with them.

Q. Well, did you instruct Mr. St. Sure the absolute maximum that you would permit him to sign on for San Francisco operations of the Cannery workers Union?

A. Yes, we did.

Q. Can you tell us what that was?

A. Well, of course, we instructed what we wanted; then the Alaska Packers and ourselves tried to work out what was a fair adjustment of our ideas. You have got to be a little flexible in the

(Testimony of G. B. Peterson.)

thing, but broadly speaking we insisted that we had to have some production because we had not been able to make any profit over several years. The Alaska Cannery Workers Union which you speak of, of course, was a peculiar situation in that we had reached what we thought was an industry wide agreement the prior year and your representative, that is the representative of this union, was in Alaska and signed for what we thought this union and we had negotiated—what we thought was an industry wide agreement.

By Mr. Madison:

Q. In Seattle, you mean? A. In Seattle.

By Mr. Resner:

Q. You are referring now to 1939?

A. Yes. Then they came down to San Francisco. And after we had everything, you might say, loaded on our boats they said, "Oh, we are not going to go for what we signed for. We demand that we get some raises here, there and everywhere!"

Well, we were in a predicament where we practically had to give in. Therefore, we felt that those tactics were so obviously unfair, especially as we negotiated what we thought was a very liberal agreement in 1939, we felt that we should not agree to these advantages which had been gained under duress and insisted that the 1939 Seattle Agreement be adhered to.

Q. And then you never instructed Mr. St. Sure that he should offer to the union the 1939 San Fran-

(Testimony of G. B. Peterson.)

cisco Agreement for the operations [188] out of this port?

A. I never heard any such offer as that being made.

Q. Do you have operations from Seattle?

A. No.

Q. San Francisco is your only operation?

A. Yes.

Q. What about your pack on hand at this time? What is the extent of it?

A. Our pack? I could give you the figures, but I notice the Alaska Packers did not and I imagine that that is probably a confidential matter. But I can say it is less than last year.

Q. Less than last year's pack?

A. Yes. We have on hand at the present time less than we had on hand at this time last year.

Q. These vessels you have chartered out since the season have been given out?

A. As a matter of fact, we haven't. We thought we had a charter, but we are not sure right now whether it is going to go through or not.

Mr. Resner: That is all. Thank you very much, Mr. Peterson.

Examination by Mr. Oliver:

Q. Mr. Peterson, may I ask you a couple of question? I expected to have a statement of sailings similar to the other companies, but it hasn't arrived.

Mr. Peterson, you are familiar with the sailings by the Alaska Salmon Company to Alaska?

(Testimony of G. B. Peterson.)

A. Generally we are familiar with what the other fellow does.

Q. And it is true, is it not, the sailings from San Francisco to Alaska and return by the Alaska Salmon Company vessels are approximately the same as yours?

A. Yes, I would say approximately.

Q. And you are familiar, are you not, with the location of the plants of the Alaska Salmon Company in Alaska?

A. I am.

Q. And those plants are situated wholly in the Bristol Bay area, are they not?

A. Yes.

Q. And there are no operations conducted by the Alaska Salmon Company in Central and Southern Alaska?

A. Not that I know of.

Q. You mentioned in your testimony that upon being notified by Mr. Fleager that the Alaska Salmon Company was not to operate this year that you—and I couldn't hear whether you said anybody else—insisted that notification would be immediately given to the unions. It is true, is it not, that Mr. Fleager along with you and the others were insistent upon notification being given to the unions immediately?

A. Oh, yes. We all discussed it, and it seemed the only [189] thing to do.

Mr. Oliver: That is all.

By Mr. Resner:

Q. Just one question. You don't have any operations at all in Alaska this year, do you?

A. No.

(Testimony of G. B. Peterson.)

Q. And you haven't started it, and none is planned? A. No.

Mr. Madison: I have nothing further, if your honor please, in connection with this offer of proof, copy of which I have given your honor and copy of which I have given Counsel for the Claimants. So far as pertains particularly to a wage dispute I doubt if this offer has any material direct application. However, it occurred to me in connection with claims which may be made either by these Claimants or others for unemployment compensation in Alaska that this statement of the operations and classifications of the various ex-employees up there may be of some help to the Commission. Therefore, I will make this offer. If Counsel wishes to stipulate to it there will be no necessity of calling any witness. If your honor decides to reject it on the ground it is incompetent and irrelevant and immaterial then let the offer stand as our offer subject to that ruling. If neither of those two things are done, I will put a witness on and he will testify to all this.

Mr. Resner: I don't think it is relevant, Mr. Commissioner. I would object to it on that ground. It is not on the subject before the Board at this time. As I understand it, it is simply a question of whether or not such a labor dispute exists as justifies nonpayment of benefits to the men of the Alaska Cannery Workers Union, Local No. 5.

Referee Roden: Well, I tell you, Gentlemen. My directions are to simply investigate as to

whether or not a labor dispute existed at the time these negotiations were going on; and I am willing to do anything to expedite the adjustment of the claims of these men if they have any claims. And I think the offer of proof is material and for that reason I overrule the objection, unless you submit some evidence concerning it?

Mr. Resner: I submit here evidence is being on behalf of all these organizations who, of course, are without representation on the matter before you. And the only point, as I understand it, Mr. Madison wants to bring out is that certain classifications according to the Packers contentions are exempt from [190] operations of the Act and under no circumstances would be entitled to benefits. I believe that is your point, isn't it, Mr. Madison?

Mr. Madison: We only want to get the facts before the Commission up there as to what these men do. The Commission doesn't know what the Fishermen do. They get paid five or six different ways and perform services of one kind or another. These questions have arisen and may arise up there, and we have been asked by our local counsel up there, by the Alaska Counsel, to try to help the Commission by setting forth some evidence here as to what these various people are, who they are, and what they do. Now, that is all this is intended to do.

Mr. Resner: As regards the Cannery Workers Union, of course, if the Referee rules, go ahead. But, as regards these other organizations, as I say, I am not authorized to represent them and they are without representation here. And if any evidence

is going to be taken which later might be the subject for your ruling which would exclude them from benefits, I think it is most inequitable.

Referee Roden: My purpose is this, Mr. Resner, it is quite logical to suppose, for the sake of argument, if the Commission finds that no labor dispute existed still it probably will not say Willy-Nilly, "We are going to pay these claims in full as presented to us." There may be other objections to the payment of these claims. And, to forestall any possible delay, if there is any evidence we can take now upon these points I am ready to take it.

Mr. Resner: As regards the Cannery Workers Union I would agree with you, but as regards all these other unions I would say no, because they aren't registered here.

Mr. Madison: If he doesn't represent them what right has he to make an objection?

Mr. Resner: The only party to this hearing is the Alaska Cannery Workers Union. In other words, the Packers deal with all these unions and the only union before the Commission at this time is the Alaska Cannery Workers Union.

Referee Roden: Then we will do this at the present time. We will go on as far as the Cannery Workers Union is concerned, let us proceed on that, then.

Mr. Madison: Well, to shorten the matter may I suggest that you have a chance to read this over?

[191]

That Mr. Barthold if he is called will testify to

this? That will shorten the thing considerably.
He is here.

Mr. Resner: Can we have a recess?

(At 10:30 a.m. a five minute recess was taken.)

Referee Roden: Let's proceed, Gentlemen.

(Above mentioned evidence received as Respondent's Exhibit HH.)

RESPONDENT'S EXHIBIT HH

Sailings of Alaska Salmon Companys Vessels for Alaska

S. S. Glacier

1937: Sailed from San Francisco May 21st. arrived in Alaska May 31st. Sailed from Alaska Aug. 8th. arrived San Francisco Aug. 17th.

1938: Sailed from San Francisco June 4th. arrived in Alaska June 12th. Sailed from Alaska Aug. 9th. arrived in San Francisco Aug. 18th.

1939: Sailed from San Francisco May 28th. arrived in Alaska June 6th. Sailed from Alaska Aug. 1st. arrived in San Francisco Aug. 9th.

S. S. Elwyn C. Hale

1937: Sailed from San Francisco May 29th. arrived in Alaska June 11th. Sailed from Alaska Aug. 10th. arrived in San Francisco Aug. 21st.

1938: Did not operate

1939: Sailed from San Francisco May 30th. arrived in Alaska June 15th. Sailed from Alaska Aug.

13th. arrived in San Francisco Aug. 24th.

Above Taken From Company Records

Now, with reference, Gentlemen, to the Offer of Proof I understand we can agree the same may be submitted and a statement made by or given by Mr. Barthold, by the Alaska Packers Association, may be admitted in evidence, or that portion of it may be admitted in evidence appearing on Page 2 under Ted Sneed, head of the United Cannery Agricultural Packing and Allied Workers of Alaska, Alaska Cannery Workers Union, Local No. 5. And all that statement contained in Paragraph 4, commencing on Page 4 and ending on Page 5.

Mr. Resner: That is correct. I understand the stipulation from Mr. Madison is that these matters set forth in the Offer of Proof are matters which would be testified to by Mr. Barthold. You now stipulate he would so testify?

Mr. Madison: That is right.

Mr. Resner: I want to show Page 2 where the statement is made Tallymen are exempt while in launches. I do not stipulate to that. That is purely a matter of law.

Mr. Madison: Purely a matter of opinion. I understand that.

Mr. Resner: I also want to say this does not show the classification of nurses. I understand those were not included in the 1939 agreements whereas in 1940 Local No. 5 claims jurisdiction over them.

Mr. Madison: I understand that is correct.

What disposition is to be made of the balance of the offer?

Referee Roden: I would like to know if there is somebody here who can testify with reference to the statement contained on Page 1 of the proposed offer with reference to the Marine Cooks and Stewards Association? [192]

Mr. Resner: Mr. Examiner, I should have asked you this before. If I may have a few minutes I will call the offices of the District Council of the Federation and ask them what disposition they want with regard to their affiliated unions. You merely want these classification distinctions to show these different classifications of workers belong to these particular unions; and the type of work as described in your offer?

Mr. Madison: Just read that back?

(The Reporter read the previous question.)

All I want this for, this statement, is to prove these facts. These statements are true as to the matters of opinion set forth therein. They are stated to be matters of opinion and, obviously, I am not asking anybody to stipulate those are true.

Mr. Resner: Mr. Examiner, may we have a few minutes? I will call the District Council and ask them what disposition they may want to make. It may be they will be willing to have that go in on that basis.

Mr. Examiner, with respect to this offer of proof, on behalf of the District Council No. 2, Maritime Federation of the Pacific, and its affiliated unions, they have authorized me to go ahead and represent their interests insofar as they appear in this hearing. With regard to the Marine Cooks and Stewards, we have no objection to this classification and the description of their work going in or of the International Association of Machinists, Lodge No. 68; East Bay Union of Machinists; American Communications Association, Marine Division; Marine Firemen; Marine Engineers; Alaska Fishermens Union. We will stipulate Mr. Barthold will testify the matters set forth in this *offer* of proof with regard to those unions would be the matters which he would so testify; but we will not stipulate that any of these classifications which are claimed to be exempt in this offer of proof are exempt.

Referee Roden: That is simply an opinion.

Mr. Resner: That is right.

Mr. Madison: I want to make one correction about that. Under the heading of Alaska Fishermens Union it will be noted this stipulation says: "Following is a list of the classifications of men employed by Alaska Packers Association listed under the name of the [193] union with which the Alaska Packers Association had agreements covering such classifications of work in 1939. "Mr. Barthold had just called my attention to an error in that the classifications, fishing bosses, beach bosses, trap bosses, webb bosses, seine bosses, gang bosses, and set net bosses, are not classifications specified in the

agreement. In all respects the statements contained in here will be testified to by him as true.

Mr. Resner: Of course, it will be then understood this offer of proof while what Mr. Barthold will testify to so far as these various unions are concerned our position is there may be some classifications omitted, do not at present appear, but if there do appear some classifications are left off that we would want them included.

Mr. Madison: That is correct. It is understood.

Mr. Resner: Now, Mr. Referee, here is another contract made with these different organizations.

Mr. Madison: Those are the exhibits referred to in the offer of proof.

Mr. Resner: I have no objection to the contracts going in, if that is what you want to do, insofar as the District Council units are concerned. Of course, with respect to the other unions I can't speak.

Referee Roden: Let me get that clear again? Which unions do you now represent?

Mr. Madison: Blacksmiths.

Mr. Resner: Blacksmiths, Carpenters, Master Mates & Pilots, and the Sailors.

Mr. Barthold: Do you represent the East Bay Union, too, of Machinists?

Mr. Resner: Yes.

Mr. Madison: The last two unions named on the top of Page 2 and Master Mates and Pilots and the Sailors Union of the Pacific.

Referee Roden: The American Communications Association?

Mr. Resner: American Communications Association.

Referee Roden: Firemen?

Mr. Resner: Yes.

Referee Roden: Master Mates and Pilots?

Mr. Resner: No.

Referee Roden: Marine Engineers?

Mr. Resner: Yes. [194]

Referee Roden: Sailors?

Mr. Resner: No.

Referee Roden: Alaska Fishermen?

Mr. Resner: Yes.

Referee Roden: That is all.

Mr. Madison: Now, if I may make another suggestion as to those four unions whom you do represent and whom you have no authority to stipulate, I would like to suggest Mr. Barthold be put under oath and he simply testify he has read this over and to the matters specified in relation to those four general classifications the facts set forth here are true and correct and he would so testify, of course.

Referee Roden: This witness' testimony applies to the matters set forth in the offer of proof submitted by the Alaska Packers Association and applies to those organizations, namely, the International Brotherhood of Blacksmiths, Drop Forgers, and Helpers; The United Brotherhood of Carpenters and Joiners of America; Masters, Mates, and Pilots of America, Local 90; and the Sailors Union of the Pacific—which said four organizations are not represented at this hearing by Messrs. Andersen and Resner.

All right.

MR. AUBIN BARTHOLD,

Director of the Alaska Packers Association, 111 California Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Madison:

Q. What is your name?

A. Aubin Barthold.

Q. Address? A. 111 California Street.

Q. And you are employed by the California Alaska Packers Association?

A. Yes, by the Alaska Packers Association.

Q. And have been for sometime past?

A. For the past four years.

Q. And what is your title there?

A. I am Director of the Company.

Q. Are you familiar with the operations in Alaska? A. I am.

Q. And with the work that the men do there? I am.

Q. And with the work that the men do there?

A. I am.

Q. And with their classifications? A. I am.

Q. And you read this offer of proof of the Alaska Packers Association? A. Yes, I have.

Q. And may I ask you if every statement contained therein with respect to the International Brotherhood of Blacksmiths, Drop Forgers, [195] and Helpers; the United Brotherhood of Carpenters and Joiners of America; the Masters, Mates, and Pilots of America; and the Sailors Union of the

(Testimony of Aubin Barthold.)

Pacific; and all the statements contained therein with respect to the Blacksmiths, Carpenters, Master Mates and Pilots, and Sailors,—are true and correct to your own knowledge? A. They are.

Mr. Madison: That is all.

Mr. Resner: No questions.

By Referee Roden:

Q. Let me see, is there anybody in the Hall here who belongs to the International Brotherhood of Blacksmiths, Drop Forgers, and Helpers?

A. (No One)

Q. Anybody here who belongs to the United Brotherhood of Carpenters and Joiners of America?

A. (No One)

Q. Anybody here who belongs to the Masters, Mates, and Pilots of America, Local No. 90?

A. (No One)

Q. Anybody here who belongs to the Sailors Union of the Pacific. Nobody here? All right.

Mr. Oliver: I believe Mr. Resner is willing to stipulate, on behalf of Alaska Salmon Company, that Mr. Ernest Asher, Treasurer of Alaska Salmon Company, would testify that Paragraph 4, that the facts stated in Paragraph 4, of the document entitled Offer of Proof of Alaska Packers Association was true and correct with respect to the Cannery Workers of Alaska Salmon Company?

Mr. Resner: I will stipulate Mr. Asher would so testify as stated in Paragraph 4; and I want the record to show, I think it does previously, but the record shows my objection that none of these matters

are relevant or material to the issue at hand in this hearing, which we understand is a question purely and simply of whether or not a labor dispute exists. And we have stipulated to it. We have made our stipulation as regards Mr. Barthold's testimony and various classifications and descriptions of work done solely for the purpose of expediting this matter by stipulating they would so testify.

Referee Roden: Yes.

Now, is there any other stipulation we can make, gentlemen:

Mr. Oliver: I think last night Mr. Resner had requested that Mr. Fleager be present? [196]

Referee Roden: Yes.

Mr. Oliver: And I think we agreed to stipulate along these lines in response to one of your questions to Mr. St. Sure yesterday, your question as to the reason why Alaska Salmon Company did not operate in 1940. Mr. St. Sure made a statement and, I think, the stipulation is to the effect that if Mr. Fleager had testified that he would testify to substantially the same effect as the testimony of Mr. St. Sure.

Referee Roden: In that respect can't we stipulate, Gentlemen, that the principle cause for the Alaska Salmon Company not operating was not on account a labor dispute may have existed?

Mr. Oliver: Well, I don't know just what a labor dispute is?

Referee Roden: Well, we all have a pretty fair idea of what it is, I guess. In other words, were there any reasons, cogent reasons, which compelled

the Alaska Salmon Company not to operate irrespective of any difficulties it might have encountered in negotiating a deal with its proposed employees?

Mr. Oliver: I could not go that far. I would be willing to stipulate that there were factors or causes in addition to a labor dispute.

Referee Roden: How easy would it be to get hold of Mr. Fleager?

Mr. Resner: You would stipulate to this, would you not, that it is a fact that the reason Alaska Salmon did not operate from San Francisco this year was not due solely and only to the existence of an alleged labor dispute?

Mr. Oliver: I would.

Referee Roden: Can't you go a little farther than that? The real cause was the fact that the Alaska Salmon Company was, well, financially embarrassed so it could not have operated even though an agreement had been reached between it and its proposed employees?

Mr. Oliver: No, because that is not the case.

Referee Roden: How difficult is it to get hold of Mr. Fleager?

Mr. Oliver: I think I can get hold of him. If you want Mr. Fleager I shall call him. I was trying to do away with the necessity of it by entering into this stipulation with Mr. Resner, which, apparently, was perfectly satisfactory to him?

Mr. Resner: Yes, the stipulation is all right. But I want to get the additional point, also, if we can. It is our feeling that [197] Alaska Salmon

had major reasons which do not take into account any labor disputes for not making this years expedition. In other words, their principle reasons were something else than an alleged labor dispute.

Referee Roden: Before you call him, let me ask you this question? Can you stipulate than if an agreement had been reached between the Alaska Salmon Company and its proposed employes it would have operated this season?

Mr. Oliver: I would stipulate that after having given its notification that it was not going to operate it would not have conducted any operations out of San Francisco in 1940, irrespective of whether there had been an agreement with the union or had not been an agreement with the union.

Mr. Resner: That is satisfactory.

Referee Roden: All right. You don't have to call him, so far as I am concerned.

Mr. Resner: I just want to call Mr. Rendon for several questions.

Referee Roden: Before we proceed we can all agree the relationship of employer and employe did not exist between these men and the canneries at the time these negotiations were carried on? I guess that is self-evident?

Mr. Madison: Well, it all depends on what tribunal you are before. If we tried to take that position before the Labor Board we would have our ears pinned back. We had once before the same question come up as to whether these people were

our employes or not and the Labor Board ruled they were.

Referee Roden: It seems to me when you sent out notices cancelling your contracts in 1939 that all contractual relations came to an end.

Mr. Madison: The same situation occurred in 1939 and the Labor Board ruled they were employes and we had to recognize their representatives for bargaining purposes. Now, so far as I am concerned, to my mind the question is a question as much of law as anything else and I don't think I for one, want to stipulate to it one way or the other way. That is the way I feel. [198]

Mr. Resner: Of course, it is self evident that at the time the present season would normally have commenced there was no presently existing employer-employee relationship between the various Packers and members of Local No. 5.

Mr. Oliver: That depends.

Mr. Madison: That is what I argued myself black in the face for two years ago before the Labor Board, before Mr. Woolf and your partner, Mr. Andersen. It was always decided against the employer no matter what the facts are.

Mr. Resner: I wouldn't say that.

Mr. Madison: Why should we be asked to concede something you deem to be in your favor in this particular instance when we tried to contend that for God knows how long before?

Referee Roden: It seems to me pretty plain when you cancelled the contract, abrogated the contract, no

further contractual relations existed; and, apparently, that cancellation was accepted by the union.

Mr. Madison: It was sure plain to me in 1938, but I didn't get very far.

Mr. Resner: The evidence is in, Mr. Examiner, along that line.

Of course, we can also agree no strike has been declared against the Alaska Packers, against any of the companies, and that immediately before the season would normally have started this year there were no cannery workers or any other workers employed in the various plants in Alaska with the members of the Alaska Salmon Industry, Incorporated. Do you follow me?

Mr. Madison: Now, are we going to take some more evidence or what? I have got through with all I have to offer here.

Mr. Resner: The only point is this. I am just trying to see whether we can get some of these issues cleared up? [199]

Mr. Madison: You have asked about fifteen witnesses whether there was a strike or not.

Referee Roden: Well, there was no strike.

Mr. Resner: The only point is this, whether immediately prior to the time this season would normally have started whether or not there were workers, members of a class or group represented by Local 5, who were employed in the various Alaska Plants of the San Francisco Operators?

Mr. Madison: That is what Mr. Roden wanted us to stipulate to, and I don't know whether they are employed or not.

Mr. Resner: They weren't employed January, February, March, or April of this year.

Mr. Madison: The Labor Board wouldn't have held they weren't employed.

Referee Roden: There is no evidence they were employed. The season came to an end last Fall, and that terminated all employment so far as evidence before this tribunal is concerned.

Mr. Resner: That is right. I will proceed with Mr. Rendon.

MR. VINCENT RENDON,

resumed and testified as follows:

Redirect Examination

By Mr. Resner:

Q. You have been sworn, Mr. Rendon, and testified you were a member of this Union, Local No. 5.

You worked in Alaska, did you not?

A. Yes, sir.

Q. Where did you work?

A. Alaska Salmon Company.

Q. Which Plant? A. That is B.B.

Q. Bristol Bay: A. Bristol Bay.

Q. And at the end of the season?

By Referee Roden:

Q. What place was that?

A. I don't know what they call the place, but they used to call it Diamond-BB.

Mr. Woolf: There is another name for it too, Peterson's Point.

(Testimony of Vincent Rendon.)

By Mr. Resner:

Q. What time did the season come to an end there, so far as you were concerned?

A. It is August, 1939.

Q. And you returned to San Francisco at that time?

A. Yes. We returned by that time.

[200]

Q. You didn't receive any pay from your employer between the end of that season and the present time, did you?

A. No.

Q. And you have made application for benefits under the Alaska Law?

A. I did make application for five weeks now.

Q. Are you on strike against the Company?

A. No.

Q. You haven't worked at all this season in Alaska?

A. No.

Q. And you are ready, willing, and able to work, are you?

A. I am willing to work.

Q. On what conditions?

A. On the conditions of 1939.

Q. When you say 1939 what do you mean?

A. In San Francisco.

Mr. Resner: That is all.

Mr. Madison: No questions.

By Mr. Oliver:

Q. Have you applied for work in California?

A. This unemployment compensation.

Q. Have you tried to get a job?

A. Yes. But my line of work is in Alaska.

(Testimony of Vincent Rendon.)

Q. What do you do between the time you usually come back from Alaska and the time you go back to Alaska next year?

A. Well, I wait for the season again.

Q. You don't do any work at any time?

A. Well, I can't find any job here.

Q. What did you do between, say, August of last year and May of this year?

A. Well, I hung around our union hall.

Q. Did you apply for work? A. Yes, I did.

Q. Did you apply to the Alaska Commission for work? Did you state to the Alaska Commission that you were ready, willing, and able to work?

A. Yes.

Q. Had you registered for work?

A. Yes.

Q. Have you had an offer for a chance to work for anybody else? A. No.

Q. Do you receive any compensation from the union? A. Yes.

Q. Are you receiving compensation from the union now? A. No.

Q. When did your compensation from the union stop?

A. It stopped about a month ago, but they paid me only a dollar a day. That is, enough to pay my car fare.

By Mr. Resner:

Q. That is, during the time of the negotiations?

A. Yes. [201]

(Testimony of Vincent Rendon.)

Q. As a Committeeman?

A. As a Committee.

By Mr. Oliver:

Q. You don't receive any compensation other than carfare?

A. Well, they pay me only dollar, or sometimes only 50c, because we are not operating as a big corporation.

Q. Did you go to Seattle? A. Yes.

Q. Were you compensated while you were in Seattle?

A. Yes. They give me room and board.

Q. You were last employed by your union, were you not, in California?

A. No, they never pay me no wages. They pay me only carfare, or something, for my lunch.

Q. Well, under a lot of these up in Alaska when you work for the Alaska Salmon Company the food that you get is included amongst your compensation?

A. Yes.

Q. Now, is that any different when the union pays you? A. No.

Q. For your food?

A. Yes. In Alaska they told me my food is a dollar. That is what my union, they give me, a dollar a day, too.

By Mr. Resner:

Let me interrupt here to let the record show the claims as rejected by the Alaska Compensation Commission exclude compensation for the food; and,

(Testimony of Vincent Rendon.)

though that is supposed to be a part of the compensation in Alaska, the Commission is now allowing benefits for it.

Mr. Oliver: I was only interested in the fact whether he was employed in California and who his last employer was?

Mr. Resner: Making the point whether this car fare is compensation or not?

Mr. Oliver: The Act apparently requires that he be last employed by the Alaska Cannery Company.

I have no further questions.

By Mr. Resner:

Q. Were you employed by the union?

A. No.

Q. Were you a paid official of the union?

A. No.

Q. This money you are getting, it represented merely carfare?

A. Merely carfare and my lunch.

Q. In other words, expenses for negotiations with the union?

A. Because the unions—we can not afford to pay no big wages at all.

Q. Were you paid any wages?

A. No wages at all.

Q. Then you weren't a paid employe of the union?

A. No. [202]

Mr. Oliver: He has already testified, Mr. Resner, he had his food paid and his travelling expenses paid.

Mr. Resner: Of course, that is not wages. That doesn't make a man an employe.

(Testimony of Vincent Rendon.)

Mr. Oliver: You read under this Act wages consist of any compensation, regardless of form.

Mr. Resner: Well, that is all I have. No further questions.

By Mr. Oliver:

Q. Have you been assigned to work at any cannery in Alaska this summer? A. No.

Q. Did the unions make up any list of which they assigned various men to various canneries in Alaska?

A. They will assign me to the canneries where they will operate this year, but there was no operation at all. That is why I didn't have no job.

Q. If the Alaska Packers had operated this year and the Alaska Salmon Company had not, would you have been? And the Red Salmon had operated? Would you have been assigned to the Red Salmon or the Alaska Packers?

A. I believe that—I don't know where they will assign me, but I put up my application for any cannery that is open for 1940.

Q. Do you or do you not know, or is it or is it not true, that you were assigned to work at a cannery in Alaska other than that of the Alaska Salmon Company? A. I don't know.

By Mr. Resner:

Q. Well, did the union assign you to any cannery?

A. They will assign me in any cannery that is open.

(Testimony of Vincent Rendon.)

Q. But the assignments aren't made until the agreement is signed? Isn't that correct?

A. Yes.

Q. And no agreement was signed and, therefore, no assignments made. Is that also true?

A. Yes.

By Mr. Oliver:

Q. Now, you worked for the Alaska Salmon Company, as you testified I think, in 1939?

A. Yes.

Q. Where did you work in 1938?

A. In Alaska Packers.

Q. Where did you work in 1937?

A. Alaska Packers.

Q. Where did you work in 1936?

A. In Red Salmon.

Q. When was the last time before 1939 that you worked for the Alaska Salmon Company?

A. That is August 19th. That is the day. [203]

Q. What year? A. 1939.

Q. Before that?

A. I did not work Alaska Salmon. I work for Alaska Packers in 1938.

Q. You think, do you not, if there had been an operation by the other two packers you would have worked in Alaska this summer?

A. That depends on my union? They would assign me.

Mr. Resner: The witness has already answered the question, he doesn't know. Assignments aren't made until after the contract is signed.

(Testimony of Vincent Rendon.)

By Mr. Oliver:

Q. Was there any notice posted in the union hall if you didn't have a regular agreement with the employers this year you would get unemployment insurance from Alaska?

Mr. Resner: I object to the question as being completely incompetent, irrelevant and immaterial. I don't see what point it makes. Of course they are entitled to benefits. If the union posted notices it should have posted notices to apprise the men of their rights.

A. (Mr. Rendon) I think they have a notice that every member that they are not working, well, we can file an application for the unemployment compensation.

Mr. Oliver: No further questions.

Mr. Resner: That is all, Mr. Rendon.

I want to make this offer of proof. That I will call all the other claimants whose names are on file here and they will testify substantially as Mr. Rendon has, excluding the testimony concerning union activities.

Mr. Madison: I won't stipulate to that.

Mr. Oliver: I won't either. We can't.

Mr. Madison: You said there was a labor dispute now.

Mr. Resner: I never said there was a labor dispute. You said there was a labor dispute.

Mr. Madison: If you want to test all your applicants for their qualifications or disqualifications go ahead and test them. I am not going to stipu-

late to their qualifications and disqualifications. I don't know anything about them at all.

Mr. Resner: The only point is this. They worked in Alaska last year. That they are not on strike this year. [204]

Mr. Madison: I don't know if they have worked. I haven't checked those lists. You haven't offered them to me.

Mr. Resner: I believe I offered the claims. They are in evidence, all of the claims that have been made so far—the names of the claimants—those names offered and rejected are in evidence.

Mr. Oliver: But the Claims, themselves, are not in evidence, are they?

Referee Roden: No, they are not.

Mr. Resner: No. They are in the hands of the Commission.

Mr. Oliver: In the beginning of this proceeding one of my objections was and still holds good—we don't know yet what the Claims are or who the Claimants were?

Mr. Resner: We can get them from the Commission. They are on file with the Commission.

Mr. Madison: The answer is no. We won't stipulate to it. If there is something else about this man's testimony, I don't recall all exactly he testified to, if there is something else about it that you want to stipulate to let me know. Reduce it and I will tell you whether I will or not, but I am certainly not going to testify to all the qualifications of all the Claimants. I don't even know who filed or what their claim is.

Mr. Resner: It is merely this. All the members of the union who have filed claims would testify that they worked in Alaska last year. That they are not working this year. That they have filed claims. That they are ready, willing, and able to work on the basis of the 1939 San Francisco agreement. That they are not on strike against the Company.

Mr. Madison: I have no information on that whatsoever.

Mr. Resner: I know that. I am merely asking you whether or not you will stipulate to the fact these other witnesses I have put on will so testify, simply as to my stipulation Mr. Barthold will testify to your offer of proof.

Mr. Madison: Absolutely no.

Mr. Resner: Then, Mr. Referee, I suppose I will have to call all these hundreds of Claimants.

Referee Roden: All right. Let's proceed.

Mr. Oliver: It is true, is it not, Mr. Resner, those lists are of ones who have filed claims and whose claims were rejected prior [205] to this hearing?

Mr. Resner: That is right.

Frank Aragon? (No response)

Sing Tom?

Quong Chin?

Sam You?

Alfonso L. Plasabas?

If any of the members of the Union hear me call their name I want them to come forward and take this witness chair.

Philip R. Olita?

Mamerto Diangzon?

Vincente Osorio?

MR. VINCENTE OSORIO,

SS.A. No. 567-16-7645, being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. Your name is Vicente Osorio, Social Security Number 567-16-7645? A. Yes, sir.

Q. Where did you work last year during the Alaska Salmon season? A. In Chignik.

Q. Who for? What Company?

A. Alaska Packers.

Q. And you have made a claim for unemployment insurance? A. Yes, sir.

Q. This year? A. Yes.

Q. Are you on strike against the company?

A. No, sir.

Q. Are you ready, willing, and able to work?

A. Yes, sir.

Q. On what conditions? A. 1939.

Q. 1939 what? 1939 San Francisco Agreement?

A. San Francisco Agreement.

Mr. Resner: That is all.

Mr. Madison: Just a second. Is that all you want to show by all these witnesses?

Let me ask you this? Would a stipulation be satisfactory to you that each of the Claimants, whose

names have been introduced in evidence here, would testify as this man has testified? But that such testimony shall not be deemed to be controlling over: One, of the fact that they have or have not filed claims, which will appear as a matter of record in the Unemployment Commission in Juneau; and, two, as to whether they did or did not work for one of the canneries last year will appear on check with the company's payroll. [206]

Mr. Resner: Is that your question, Mr. Madison?

Mr. Madison: Yes.

Mr. Resner: The answer is yes.

Mr. Madison: Then, I would like to have that written up and take a look at it and I think, quite probably, we could stipulate to that. And that will avoid calling about two thousand witnesses.

Mr. Resner: That is right, Mr. Madison. That is just what I asked for five minutes ago.

Mr. Oliver: Just one question. You asked the question, I think, that they are ready, willing, and able to work? And you say under 1939 conditions?

Mr. Resner: Of San Francisco.

Mr. Oliver: Now, if you are coming under the Alaska statute and trying to qualify these matters they have to be ready, willing, and able to work in any suitable work; and it doesn't have to be on 1939 conditions.

Mr. Resner: That is up to the Commission to decide.

(Remarks were made off the record.)

Mr. Resner: Well, I am going to offer to prove by each Claimant whose claim is on file at the present time before the Commission, whose names are in the records, that they are members of Local 5 of the Alaska Cannery Workers Union. They have filed claim they are not on strike against the company for 1940 Alaska season. They are ready, able, and willing to work for the 1940 Alaska season on the basis of the 1939 San Francisco agreement.

Mr. Madison: And that stipulation of Counsel for the Canners to this effect would not be deemed to waive or adversely affect any right to raise any other disqualification that may be contained in the Act in the event it should be decided that no labor dispute exists.

Mr. Resner: I certainly should stipulate you would not be precluded from raising any substantial objection at any time you wanted to.

Mr. Madison: Or the Commission, either, of course.

Mr. Resner: Certainly. Because the only dispute here is a labor dispute, as I understand it, as the Examiner stated when we first started this hearing?

(Thereupon, at the request of Counsel, copies of that portion of the transcript from the top of page 335 to the end of the last previous sentence were made by the Reporter and delivered to Counsel.) [207]

At 12:00 M the hearing was adjourned, to reconvene at one o'clock.

Wednesday Afternoon Session

At 1:30 P.M. the hearing was reconvened by Referee Roden.

Referee Roden: All right, Gentlemen, come to order.

Did you look at that, Mr. Madison?

(Referring to the copy of that portion of the transcript appearing on page 335, which was made upon adjournment at 12:00 o'clock.)

Mr. Madison: Yes, it is entirely satisfactory to us.

Mr. Resner: Yes.

Referee Roden: I haven't seen it. Is it satisfactory?

Mr. Resner: As far as I am concerned, it is all we offered to prove by our witnesses.

Mr. Madison: I believe this means these witnesses if called would testify to that?

Mr. Resner: That is all.

Mr. Madison: That amendment is entirely satisfactory.

Referee Roden: Well, we will admit it is evidence then. Is there anything further, Gentlemen?

Mr. Resner: It says ready, willing, and able to work for the 1940 Alaska season.

That is all.

Mr. Madison: I would like at this time to introduce in evidence the balance of those minutes which you said you wanted to introduce a certain part of it. I thought they all ought to be introduced, and want to introduce the balance of them.

Referee Roden: Exhibit 15? Well, I guess that is admitted, of course, as to any minutes that are relevant at all.

Mr. Resner: Are you referring to the comments about the unemployment insurance?

Mr. Madison: I am referring to the whole thing, any part of the minutes that tend to show the offer made the 29th was not a bonafide offer.

Referee Roden: Any part of the minutes that are relevant.

Mr. Resner: The only point for which I offered these minutes is already in the record, and I see no relevance to the balance of the minutes.

I object on that ground.

Referee Roden: Objection overruled. [208]

I have nothing further. Anything further, Gentlemen?

Mr. Madison: Nothing further.

Referee Roden: I understand you Gentlemen are going to submit a brief on this question of whether a labor dispute existed?

Mr. Resner: Yes. Can we fix a time limit?

Referee Roden: Yes, how many days do you want?

Mr. Oliver: Is that limited to the labor dispute question solely?

Referee Roden: If you want to touch upon any other point, that is all right, that you might think is involved?

Mr. Madison: I presume you will enter a brief and we will have an opportunity of replying to it?

You are the Claimant and the Claimant is usually the moving party.

Mr. Resner: We are going to file a brief, Mr. Madison. My thought is this, however. Both parties should file briefs simultaneously and both parties reply to the other parties brief.

Mr. Madison: Frankly, the issues of the case were outlined somewhat briefly by you in your opening statement. They acted in such a way you seek to claim whatever you call it didn't apply to this particular situation. In my mind, if I filed a brief now I would say it was perfectly obvious to everybody it was a trade dispute.

You have got some other theories about this thing. Let's answer them in an intelligent way; and then if you want to file an answer to my brief it is all right, of course.

Mr. Resner: Of course, the question of time is very important.

Mr. Madison: I will agree to reply in ten days.

Mr. Resner: I wouldn't want any more than ten days. Today is the 19th. I wouldn't take any more than ten days; and, I think, the Respondents here should have five days after that?

Mr. Madison: We have ten and you have five. You want ten, we have ten, and then you want five, is that right?

Mr. Resner: Is that what you want, Mr. Madison?

Mr. Madison: Yes.

Mr. Resner: I think that is all right, with this

exception, however, if I can get my brief in within a period of, say, three or four days I would like to have some assurance you people would try to do the same? [209]

Mr. Madison: We will be very happy to.

Mr. Resner: With that understanding, it is all right.

Mr. Oliver: Is there a title?

Referee Roden: I told the Reporter to put the title in the matter of Frank L. Aragon, et al, Members of Cannery Workers Union, Local No. 5, San Francisco.

All right, Gentlemen. I thank you for your kind attendance.

(Remarks were made off the record.)

At 1:45 p.m., Wednesday, June 19, 1940, the hearing was adjourned. [210]

Before the Unemployment Compensation
Commission of Alaska

In the Matter of

FRANK L. ARAGON, et al.

MEMBERS OF CANNERY WORKERS UNION
LOCAL NO. 5, SAN FRANCISCO,

Claimants for Unemployment Benefits.

DECISION BY REFEREE

Statement of Case. The claimants having been disqualified by an initial determination of the Unem-

ployment Compensation Commission from receiving unemployment benefits for eight weeks on the ground that their unemployment was due to a labor dispute in active progress at the establishment at which they were last employed, under the provision of section 5 (d) of the Alaska Unemployment Compensation Act, the Alaska Commission appointed a Referee to take such evidence as might be offered by the claimants and their former employers, and to make findings of fact and conclusions thereon.

Both parties appeared before the Referee and submitted evidence in support of their contentions, the claimants maintaining that no labor dispute existed while the employers took the opposite stand.

The claimants are all members of Alaska Cannery Workers Union Local No. 5, of San Francisco, a local union of the United Cannery, Agricultural, Packing and Allied Workers of America, hereinafter designated the "Union"; this union is affiliated with the Maritime Federation of the Pacific.

All the claimants were employed during the 1939 canning season by the Alaska Packers Association at Chignik and Karluk (in central Alaska); and by the Red Salmon Canning Company, the Alaska Salmon Company and the Alaska Packers Association in Bristol Bay. These will hereinafter be designated as the "Employers." All the claimants reside in the San Francisco Bay Region and the Employers operate out of San Francisco.

The Alaska Salmon fishing and canning industry is a seasonal one, extending approximately from April through September of each year. The Commission has promulgated regulations wherein, for the purposes of the Act, the beginning and closing days of the salmon season for various areas in Alaska are fixed. At Kodiak Island (Karluk) the season is [211] from April 5th to September 5th; at the Alaska Peninsula (Chignik), from April 1st to September 10th; and at Bristol Bay, from May 5th to August 5th (Benefit Regulation No. 10).

From the inception of the industry in Alaska, the salmon fleets carrying supplies, fishermen, and cannery and other workers have sailed from San Francisco for the annual season to Karluk, Chignik and Bristol Bay. The Employers have for many years operated under agreement with the Alaska Fishermen's Union, and in more recent years have worked under agreement with other unions. The Employers and the Alaska Cannery Workers Union Local No. 5, representing claimants herein, entered into their first agreement in 1936. Their 1939 agreement provided that either party might terminate it at the close of the season, or before the following season, and the parties would then proceed to negotiate a new agreement.

The 1939 agreement was terminated in accordance with its provisions; correspondence was then exchanged looking toward the negotiation and conclusion of an agreement covering the employment of the cannery workers and the terms and conditions of employment for the 1940 season.

Negotiations were entered into; on April 3, 1940, and while these negotiations were pending, the Employers notified the Union that if no binding contract were concluded by April 10th, no operations would be undertaken at Karluk during 1940; if no binding contract were entered into by April 12th, no operations would be undertaken during 1940 at Chignik, and later in the course of the negotiations, the Employers informed the Union that if no binding agreement were reached by May 3rd, 1940, no operations would be conducted in Bristol Bay during the 1940 season. No agreement was reached with reference to any of the plants referred to and the negotiations culminated in a deadlock.

When the "zero hour" fixed by the Employers came, the Union was notified that no operations would be carried on at any of the Employers' plants at Karluk, Chignik or Bristol Bay during 1940.

As a result, the claimants became separated from their employment on April 10th, April 12th, and May 3rd, 1940, respectively, each with reference to his last place of employment; they became thus separated from their employment by the termination of a contract between them and their 1939 Employers and their inability to negotiate a new contract for 1940 operations. [212]

The Examiner, upon initial hearing, ruled that the unemployment of the claimants was due to the existence of a labor dispute in active progress at the plant of their former Employers and, in conformity to section 5 (d) of the Alaska Unemploy-

ment Compensation Act, held each of them disqualified to receive benefits for a period of eight weeks immediately following the opening date of their seasonal employment as determined by the Commission in Benefit Regulation 10.

From the initial determination the claimants appealed, a Referee was appointed by the Alaska Commission to take proofs and make findings and decision.

The Employers insist that their plants formerly operated by them were not in operation during the 1940 canning season on account of the existence of a labor dispute in active progress at their establishments; the Union contends that its members are unemployed because the operators refused to negotiate a new contract; that they arbitrarily terminated the negotiations; that the negotiations were not carried on on their part in good faith; that they offered to go to work during the 1940 season under terms and conditions of their 1939 contract and that they, the Employers, at no time intended to operate during 1940 due to stringent fishing regulations imposed upon them by the Bureau of Fisheries, and that this condition does not constitute a "labor dispute in active progress at the establishment of their last employers", within the meaning and purview of the Alaska Unemployment Compensation Law.

FINDINGS OF FACT

From a consideration of the evidence submitted

at the Hearing, the Referee makes the following Findings:

1. That the 1939 contract between the Union and the Employers was terminated in the month of November, 1939, and negotiations for the 1940 season contract commenced in the month of March, 1940.

There were no employees, members of the Union, employed at any of the Employers' plants immediately prior to the date of the opening of the 1940 season and none had been employed since the termination of the previous season, to wit, in September, 1939, so that when negotiations for 1940 were commenced, the relation of employer-employee did not exist between the parties to this controversy.

2. Early in 1940 the Employers organized a corporation, the Alaska Salmon Industry, Inc., for the purpose of handling labor problems and associated matters on behalf of its members, all of whom are salmon [213] canners; it opened an office in Seattle to conduct negotiations with the labor organizations representing employees of its members, particularly those operating out of Seattle and Portland; it also opened an office in San Francisco to carry on similar operations for the three salmon canners operating from there, to-wit: Alaska Packers, Red Salmon Company and Alaska Salmon Canning Company, the three operators concerned in this hearing; the Employers delegated to it authority and functions they had theretofore exercised directly.

3. On March 6th, 1940, Alaska Salmon Industry, Inc. notified the Union that it represented the San Francisco Salmon Canners, herein designated

as the "Employers" for the purpose of negotiating a contract for the 1940 season and requested meetings for that purpose.

On March 9th, the Secretary of the Union notified the Employers that a scheduled meeting for March 12th had been cancelled for the reason that the Union would not enter into 1940 negotiations until after all disputes between its members and the Canners, which had arisen during the 1939 season, had been adjusted.

On March 27th, the Union presented its proposed 1940 agreement; a meeting was held at which the offer was discussed; in it the Union raised its demands above those it had enjoyed under the 1939 (San Francisco) agreement and the 1939 San Francisco agreement was more favorable to the Union than the 1939 Seattle agreement which had been negotiated between the Canners operating out of Seattle and Portland in the same sections of Alaska in which operate the "Employers" concerned in this hearing. The "Seattle 1939" agreement had been negotiated between said Canners and other locals of the Cannery Workers Union operating out of Portland and Seattle.

On April 1st or 2nd, the Union forwarded its letter to the Employers withdrawing its proposed 1940 agreement and stating that all future negotiations concerning wage scales were transferred to Seattle where its representatives would meet, and did meet, with the Employers. This announcement

was hailed by the Employers with satisfaction; their purpose being to negotiate a coast-wide agreement between all cannery operators and the Unions so that one uniform agreement should govern them all; such a coast-wide agreement would put the San Francisco operators on an even competitive footing with the Seattle and Portland operators. The San Francisco operators hoped to cut the San Francisco Union demands which it had been required to pay for a number of years, [214] down to the Seattle Union demands, while the San Francisco Unions expected to improve their position under the agreement expected to be negotiated in Seattle; in other words, both parties to the controversy hoped to gain by the coast-wide agreement to be negotiated in Seattle.

On April 3rd, the Employers advised the Union that if no satisfactory agreement were reached between them and all unions concerned by April 10th, operations at Karluk would not be undertaken and if no agreement were reached by April 12th, the operations at Chignik would be abandoned for 1940; this letter contained specific offers to all the Unions concerned by the Alaska Packers who were the only operator concerned in the Karluk and Chignik regions. This letter, in part, is as follows:

April 3, 1940.

To the Unions Concerned:

We are advised by Alaska Packers Association that if that Company is to operate at Karluk and

Chignik during the 1940 season, the S.S. Chirikoff must sail from San Francisco not later than April 17, 1940. Since it is necessary to prepare and make purchases for this expedition, if it is to be undertaken, all arrangements for employment for Central Alaska must be consummated on or before April 10, 1940.

If agreements for employment are not completed by that time, it will be impossible to attempt to operate at Karluk, and that operation will not be undertaken.

We are advised further by Alaska Packers Association that if there is no operation at Karluk, but an expedition is outfitted for Chignik only, the sailing date for the S.S. Chirikoff can be postponed to April 21, 1940, and the final date for making preparation to April 12, 1940.

Each of these dates represents the latest possible time that can be set, and no leeway is allowed for unfavorable factors of weather, breakdown, etc.

We are authorized to submit this information to you upon the basis that if the final dates indicated for preparing the respective expeditions are allowed to pass without complete agreements as to working contracts with all unions concerned, such expeditions cannot and will not be undertaken. The experience of past years has proven that unless a clear declaration of intention is announced by operators and unions alike, last minute demands, negotiated under penalty of great losses to the operators necessarily resulting from delayed expeditions, have

placed an unfair burden on attempted operations. It is essential that we avoid a repetition of this procedure in 1940.

Because certain delays have been experienced already, we believe it is proper to outline the progress of negotiations to date.

Prior to March 1, 1940, all unions having contractual relations with salmon cannerys operating out of San Francisco, were advised of the termination of the 1939 agreements and of the necessity of negotiating new agreements for the 1940 season.

On March 4, 1940, offices were established in San Francisco by Alaska Salmon Industry, Inc., and on March 8, 1940, a letter was addressed to each union signed by the San Francisco operators, certifying that Alaska Salmon Industry, Inc., was authorized to represent these operators in all negotiations for the 1940 season but without representation that there would or would not be operation.

[215]

This letter of authorization was prepared at the request of the unions affiliated with the Maritime Federation of the Pacific.

On March 6, 1940, these unions advised the office of Alaska Salmon Industry, Inc. that no negotiations would be undertaken without such authorization, and that even if such authorization existed, no negotiations would be undertaken by any union as that group until all prior claims of all unions of the group were settled to the satisfaction of the unions concerned.

In reply to this declaration, Alaska Salmon Industry, Inc., advised each union affiliated with the Maritime Federation of the Pacific as follows on March 8, 1940.

“Enclosed herewith is a statement from Alaska Packers Association, Alaska Salmon Co., and Red Salmon Canning Company, indicating the extent to which Alaska Salmon Industry, Inc., is authorized to deal with you on their behalf. Your attention is drawn to the fact that such authority is strictly limited to negotiations regarding a contract for the 1940 season only, without any representation whatsoever that any of these canners will or will not operate in Alaska this season, and that such negotiations can be directed only to matters immediately involving a possible 1940 contract without reference to any unadjusted matters arising out of previous collective bargaining agreements.

“Should you desire to present any claims arising out of operations for 1939 or prior years, you are requested to take them up directly with Mr. Fleager of Alaska Salmon Company, Mr. Peterson of Red Salmon Canning Company, or Mr. Everett Matthews of the firm of Pillsbury, Madison and Sutro, on behalf of Alaska Packers Association, as the case may be. These gentlemen are already well acquainted with problems which have arisen under the previous contracts, and inasmuch as they have already had under consideration a number of these claims, it is the decision of these companies that

they should follow such disputed matters through their final settlement.

“This office, on the other hand, has had no experience either with the previous contracts in general, or with the specific disputes which have arisen under them. We are prepared only to consider possible arrangements for the coming season. Will you therefore, please present any such claims immediately to the parties above named for further discussion.

“Since the companies individually are ready to meet with you concerning all prior claims, we believe it is obvious that all unsettled matters for previous seasons can be adjusted through proper legal channels without depriving either party of a full and fair determination. Since this right of adjustment exists, and since the time factor is so vital to all parties concerned, we trust that you will not continue to take the position heretofore declared by you to the effect that the final settlement of all these separate claims in a manner satisfactory to you is a condition precedent to any 1940 negotiations. Such a position might jeopardize all possibility of operation, for it would require one party or the other to forfeiture of a right to a full hearing under threat of a refusal to bargain.

“Consequently, we will appreciate your advising us in writing at your earliest convenience concerning the position which your group proposes to take in the light of this communication.”

From March 8th, until March 19th, no negotia-

tions were conducted with any of the Unions affiliated with the Maritime Federation of the Pacific because of their refusal to meet, but on March 19, 1940, the Alaska Fishermen's Union presented to the Alaska Salmon Industry, Inc., a series of demands for changes in physical equipment in Alaska, together with certain contract changes. This union stated that specific replies concerning the requested physical changes would be required before any further negotiations would be carried on. Since that time, two further meetings have been had with the Fishermen's Union to discuss all matters presented by its representatives. [216]

On March 21st, the Marine Engineers Beneficial Association made an appointment for a meeting, but failed to appear, and despite our request for another appointment, none has been made.

On March 27th, meetings were had with representatives of the Marine Cooks and Stewards and with the Alaska Cannery Workers at which preliminary demands for contract revisions were presented. Further meetings to negotiate these demands were held on March 29th. We are now advised by the Alaska Cannery Workers Union, by letter dated April 2nd, that they are withdrawing from negotiations in San Francisco and will negotiate all agreements at Seattle.

Also, on March 29th, the representatives of the American Communications Association met with us for the first time and presented a proposal for a tentative agreement, and on April 2nd, the Marine Firemen presented their demands.

Negotiation meetings and conferences have been held with the Masters Mates and Pilots, the Sailors Union of the Pacific, the Carpenters Union and the Blacksmiths Union. To date the two Machinists Unions have declined to meet for purposes of negotiation.

On the basis of this record and because of the pressure of time heretofore indicated, we deem it necessary to state in detail the proposals and counterproposals of the operators covering the work claimed by each union, with the understanding that unless existing differences can be adjusted or negotiated before the dates hereinabove mentioned, the respective operations cannot be undertaken, despite our willingness and desire to operate if fair conditions are established.

In general, each union thus far contacted has been advised by the operators representatives that operating costs under union contracts have amounted to such an extent that no further increases can be granted and further, that certain conditions, particularly those involving over-time claims of certain unions, must be corrected if the industry is to be enabled to continue in business. Upon this general premise, the operators hereby propose working agreements and conditions which they submit to be fair. Wherever changes from 1939 agreements are offered, the reasons for such changes are set forth in detail.

In making the following proposals and counter proposals, the operators desire to emphasize that

they are in all instances equal to or in excess of conditions already established and approved by the unions concerned in their dealings with other industries and in dealings with competing operators in the same and allied industries. The salmon canners do not believe that they should be required to make further concessions which will cause their operations to be actually and competitively impossible without continuing heavy losses.

The specific proposals hereinafter listed are intended to cover possible operations in Central Alaska only, and not intended to apply to Bristol Bay. The possibility of operation at Bristol Bay will depend upon negotiation of working agreements of a mutually satisfactory nature, and it is hoped that immediate discussions will be undertaken by the unions concerned.

Although the time factor, and the refusal of certain unions above listed to negotiate at all, will make it difficult to discuss in detail all matters of difference resulting from the proposals and counter proposals made herein, Alaska Salmon Industry, Inc., is ready and willing to meet immediately with any or all union representatives to attempt to negotiate all matters requiring clarification before the beginning dates specified. The canners desire to operate in 1940 if the unions will agree to conditions making such operations possible.

Herewith are the proposals and counter proposals of the operators.

1. Alaska Cannery Workers Union: The agree-

ment for operations out of San Francisco will be negotiated on a uniform basis at Seattle, with provisions to apply to all operations undertaken from California, Oregon and Washington. The San Francisco operators have authorized Alaska Salmon Industry, Inc., at Seattle, to represent them in those negotiations which are now in progress. In the event that satisfactory [217] agreements are reached for Central Alaska and those operations are undertaken or in the event that Bristol Bay operations are undertaken on an agreed basis, cannery workers will leave on the May 22nd expedition. Any employment, is, of course, contingent upon operation.

May we have your immediate reply to this communication.

Yours truly

ALASKA SALMON INDUSTRY, INC.

J. Paul St. Sure

To this letter the Unions sent the following reply:

San Francisco Bay Area District Council No. 2

April 8, 1940

Alaska Salmon Industry, Inc.,
230 California Street,
San Francisco, California.

Attention: Mr. J. Paul St. Sure

Dear Sir:

Please be advised that the unions affiliated to the

Bay Area District Council #2 of the Maritime Federation of the Pacific have, in meeting, taken your letter of April 3rd under consideration and have instructed me to forward the following information to your office.

The following motion was made and carried:

“That a letter be sent to the Alaska Salmon Industry, Inc., informing them that their proposals as submitted to the various unions affiliated to the Council are unacceptable to all organizations.” And further,

“That all organizations, with the exception of one, namely, the Machinists, stand ready and willing to meet and negotiate on the basis of the proposed agreements that they have submitted.”

I wish to point out further that it was the unanimous opinion of all delegations that new contracts can be negotiated if an honest effort to reach such an accord is made by the representatives of the Companies. It was their opinion that the action taken by the Companies in designating lawyers to conduct their negotiations, and said lawyers according to their own statements know nothing of the Salmon Packing Industry, does not make for a proper understanding and can only result in further complicating any amicable adjustment of differences.

In previous years negotiations were conducted by practical common sense men of the industry and agreements were successfully concluded. In view

of this, the Committee was of the opinion that the injection of the attorneys as negotiators can only be interpreted as an expression of bad faith on the part of the Packers.

The joint negotiating committee also went on record as requesting an answer to our letter of March 1st, in which we stated our position in reference to not sailing this season with Doctors Peterson, W. W. Peterson, and Schranke.

You may rest assured that the negotiating committee of the various unions is at your disposal whenever your committee is desirous of meeting with them and discussing the proposals that they have submitted.

I would like to suggest that due to the lateness of the time and because it will be necessary to have reached tentative agreements with all Council unions before any agreements will be signed, that such [218] negotiations proceed at the earliest possible time.

Very truly yours,

BAY AREA DISTRICT COUN-
CIL #2 MARITIME FED-
ERATION OF PACIFIC
REVELS CAYTON

On the same day, April 8th, the Employers telegraphed the Union they were ready to further negotiate.

A meeting was held on April 10th. At this meeting, the Employers asked that the Union execute a

memorandum agreement to be effective in the event an agreement could be reached with a number of other Unions with whom negotiations were then pending; this memorandum was intended to bind the Union to abide by any agreement that might be negotiated in Seattle. The Union refused to execute such an agreement, saying it would await the outcome of the Seattle negotiations.

No agreement having been reached between the parties by April 10th and 12th respectively, the operations at Karluk and Chignik by the Alaska Packers were abandoned for the 1940 season; upon request, the Employers, in writing, so notified the Union under date of April 22, 1940.

4. On April 26th (and after various meeting had been held) the Employers addressed a letter to the Union urging the necessity of action if an agreement to cover Bristol Bay operations was to be arrived at before the final date fixed, May 3rd.

On April 27th, the Employers, by letter, requested the Union to execute a memorandum agreement to cover Bristol Bay operations, as they had previously requested one for the Karluk and Chignik operations in view of the fact that the negotiations in Seattle had up to that time not resulted in a firm agreement.

A number of meetings were held and communications exchanged between the Employers and the Union between April 27th and May 1st. On May 1st, a meeting was held at which the Employers requested the Union to execute a memorandum to pro-

vide that in event no agreement were reached in Seattle that in 1939 Sattle agreement would be the basis for their compensation and working conditions during the 1940 Bristol Bay operations; the Union countered by insisting that if no new agreement were negotiated in Seattle, the San Francisco 1939 agreement should be the basis for their 1940 compensation and working conditions. At the last minute attempts were made to come to an understanding; the Union insisted upon a renewal of their 1939 agreement, while the Employers insisted upon the acceptance [219] by the Union of the so-called "1939 Seattle agreement", the provisions of which were less favorable to the Union than the 1939 San Francisco agreement.

(Eventually a new agreement was negotiated at Seattle but this expressly excluded operations out of San Francisco and only covered **Cannery Workers** locals from Seattle and Portland.)

No agreement having been reached between the parties by midnight of May 3rd, all Bristol Bay operations were abandoned by the Employers.

While the aforesaid negotiations were progressing, the Employers made the preparations usually made by Central Alaska and Bristol Bay operators in anticipation of their annual operations in those waters; they purchased large quantities of cans, can-ends, rope, cotton and linen webbing, lumber, and other supplies and equipment to the value of about four hundred thousand dollars and they put their ships in readiness for their usual annual trips;

in anticipation of their 1940 operations they declined to charter their ships and it was their intention to use the same number of them in their 1940 operations as had been used in 1939, with the exception of one major ship.

There is no evidence to support the Union's contention that the Employers acted in bad faith in the course of the negotiations.

Counsel for the Union, in their brief express the opinion that the Employers did not negotiate in good faith, that they never intended to operate in 1940, that the negotiators simply went through the form and that since there was to be a definite curtailment of fishing the Employers used that as a lever to depress wages and conditions of the Union to the point where it would mean surrender of much that had been gained by it during years of struggle.

The opinion is not founded in fact. The grounds upon which it rests, as shown by the evidence, are because:

(a) The Employers formerly negotiated the annual agreements by their executive officers who were experienced cannerymen while this year, under the new set-up they were negotiated by Salmon Industry, Inc., acting through two representatives, one of whom is an attorney, the other an experienced businessman;

(b) on account of the 1940 restrictions on fishing, imposed by the Bureau of Fisheries, the 1940 operations were expected to prove unprofitable and

the Employers had an opportunity to charter their cannery ships at profitable rates; and [220]

(c) during the two months of negotiations, only 18 meetings were held in Seattle and four in San Francisco.

None of the grounds urged impresses me. The fact that the wage negotiations were transferred from San Francisco to Seattle left little to be discussed at the latter place; it was admitted that after this happened only matters of minor consequence were considered in San Francisco.

In view of the uncontradicted evidence of the Employers (except Alaska Salmon Canning Co.) to the effect that they made practically the same preparations for the 1940 season as had been done in former years, there was left little room to doubt their good faith.

The evidence shows that the Alaska Packers, held in readiness their fastest steamer for their contemplated Karluk and Chignik operations; they purchased supplies and equipment, to be used in Karluk, Chignik and Bristol Bay canneries to the amount of nearly four hundred thousand dollars; these supplies (at the time of the hearing, June 19th, 1940) were still in their warehouses in San Francisco "for the inspection of anybody who desires to see them"; (see Tr. pg. 266) they purchased cans, can ends, lumber fibre boxes, caterpillar trucks, piling, linen and cotton webbing, rope, box shooks, laundry equipment demanded by the Unions, blankets, motors and other items of equip-

ment all of which, "are on hand and available for anybody to examine who wishes to." It was admitted that the Alaska Packers intended to carry on their 1940 operations with one less major vessel than had been used during previous seasons.

The manager of the Red Salmon Company testified:

"Q. Did your company want to go to Alaska?

A. Well, we had been operating for 45 years and the only time we haven't gone is when the government prevented an operation in 1935; our Board of Directors instructed me to prepare for an operation. We made every effort possible to go to Alaska this year. In the Spring of 1940 we had opportunities to charter our two vessels used in our Alaska operations on a favorable basis. We did not accept such offers to charter; about January, our Board of Directors instructed me not to entertain any charters or do anything that would interfere with the 1940 operations, that is, the salmon canning operations; we did entertain one charter with the stipulation that they be back by the middle of April, and we, as a part of the terms insisted they put up, I think, a hundred thousand [221] dollar bond, or something like that, for any delay at all; but that was one of the reasons the charter was not accepted."

"At the request of the Unions, we made changes in our ship for that particular voyage (to Alaska) and installed equipment which would not have been installed just to charter; we went ahead on the defi-

nite assumption we would go to Alaska this year and did everything necessary which should be done or had to be done prior to May 3rd; we decided upon the outfitting for our two canneries; how many cases we would prepare to pack; we arranged credits at the bank for the amount of money we thought we might need; we drew up a complete budget as to any improvements that were needed; we bought a power scow which is now in Seattle; we bought our nets; cans; bought casing and loading equipment in the East, which we now have and have paid for. We will have insurance and taxes and interest on that equipment we bought many other things—we were prepared and would have gone had agreements been made by the date set.” (Tr. pg. 292 et seq.)”

“On cross examination the witness stated that his company expects to use supplies and equipment purchased during the 1941 season, “if we can’t sell it at a reasonable figure of what it cost us, we certainly will try to use it any way we can, the curtailment was not a factor in our negotiations with the Union * * * we were going under full operations.”

It is common knowledge in Alaska and elsewhere that a cannery operator will not purchase tin cans, tin can ends (tops and bottoms), and fishing gear, unless he intends to use them during the season in which they are bought, nor will any businessman invest his capital in equipment which he does not expect to use in the ordinary course of his business.

There is no evidence to substantiate the claim that the Employers acted in bad faith during the negotiations; they were anxious and determined to reduce their operating costs while the Union insisted upon getting at least the same compensation and conditions as prevailed in 1939, pursuant to the San Francisco agreement.

Alaska Packers intended to carry on their usual operations at Karluk and Chignik during 1940 if an agreement had been reached and would have employed all its former employees there.

If an agreement had been reached between the Alaska Packers and the Union, one-third of the former employees of the Alaska Packers [222] in Bristol Bay would have become unemployed, on account of the curtailment prescribed by the Bureau of Fisheries and not on account of the possible existence of a labor dispute; which of their former employees would make up this one-third of unemployed cannot be ascertained from the record and, in the nature of things, could not be ascertained unless and until the actual "manning" of the Alaska Packers Bristol Bay plants had taken place.

The Red Salmon Canning Company determined to operate full capacity in Bristol Bay, due to the fact, as testified to by its general manager, "We knew that the Alaska Salmon Company was not going "to Bristol Bay during 1940" and we felt that, therefore, there would be no infringement upon the government curtailment program though we went on a full basis. We had every intention

of taking the same number of men this year that we took last year; in fact among the cannery workers we planned to take a few more." This company intended to make use of a portion of the fish that would have been allotted to the Alaska Salmon Company if it had carried on the operations in the Bay during 1940 and thereby expected to overcome the handicap of the curtailment program.

The Alaska Salmon Company, in 1939, and in previous years, had operated in Bristol Bay. It participated in the 1940 negotiations up to about the end of April when it gave notice to all interested parties that it had abandoned its plans and would not operate during that season. This decision was reached not as a result of inability to negotiate an agreement with the Union; it was reached prior to the termination of the negotiations and while failure to reach an agreement may have had its bearing upon the decision, the fact is fairly established that other reasons, not necessary to state here, induced it.

All operations contemplated by the Employers and the Union for 1940 were abandoned for the reason that a mutually satisfactory working agreement was not negotiated by the dates set by the Employers, as the "dead line" for the respective districts, to-wit,

For Karluk: April 10th, 1940.

For Chignik: April 12, 1940.

For Bristol Bay: May 3, 1940.

When the negotiations ended in a deadlock, the annual season for the respective operations as fixed by the Alaska Unemployment Compensation Commission (Benefit Regulation No. 10) had commenced at: [223]

Karluk: April 5th, 1940.

Chignik: April 1st, 1940; and was about to commence at Bristol Bay: May 5th, 1940.

To repeat, negotiations terminated with reference to:

Karluk on April 10th, 1940.

Chignik on April 12th, 1940.

Bristol Bay on May 3rd, 1940. [224]

OPINION AND DECISION

At the hearing before the Referee, all the parties, by their respective counsel, presented objections to the Initial Determination of the applicants' claims for benefits; by the initial determination, the Commission's Examiner found that the applicants were ineligible for benefits for a period of eight weeks after the date of the commencement of the 1940 season for the reason that a labor dispute was then in active progress at the plant of their last employer.

The objections are to the effect that neither the applicants nor the Employers had an opportunity to be heard at the initial determination.

When these objections were presented to the Referee, the following occurred:

Referee: In what respect are you damaged?

Mr. Resner (of counsel for applicants): Well, except that it puts the burden of proof upon us.

Referee: Not necessarily so, that is a matter that will be decided later on. Let me ask Mr. Madison, (of counsel for Alaska Packers and Red Salmon Company) in what respect are you damaged if we proceed now and do not continue this hearing?

Mr. Madison: I don't know that I am damaged in any respect. It would depend entirely upon how the matter proceeds. I am perfectly willing to proceed as long as it is understood we are not waiving any rights we may have to object later on.

Mr. Resner: Well, it is understood we are not.

Mr. Oliver (Counsel for Alaska Salmon Canning Co.): I am perfectly willing to go on that same basis."

Pursuant to stipulation and understanding with Counsel for the respective parties the sole question before the Referee is to determine whether or not the facts show that at the commencement of the canning season in 1940 a labor dispute was in active progress at the plants at Karluk, Chignik and in Bristol Bay being the plants operated by the Employers in 1939 and at which the members of the Union were then employed.

This is the only issue considered by the Referee and his decision herein is not to be construed as affecting claimants' eligibility (or that of any one of them) for benefits under any other provision of the [225] Alaska Unemployment Compensation Law.

The case of a representative claimant was submitted as a typical test and it was stipulated that the testimony taken and the decision of the Referee on the basis of the record and evidence should apply to all the members of Local No. 5, who had made applications for benefits.

This brings us to a consideration of the applicable section of our Unemployment Compensation law.

Section 5(d) as amended by the Act of January 17, 1939, reads:

Section 5: An individual shall be disqualified for benefits:

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute; and provided further, that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or directly interested in the labor dispute which caused his unemployment; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the dispute, there were members employed at the premises at which the dis-

pute occurs, any of whom are participating in or directly interested in the dispute.

It will be noted that before the section was amended in 1939 disqualification followed upon a finding by the Commission that the unemployment is due "to a stoppage of work which exists because of a labor dispute" at the factory establishment or other premises at which the employee is or was last employed. (See Section 5(d) Unemployment Compensation Act of 1937.) It will be further noticed that under the former section the disqualification continued during the entire period work was stopped due to a labor dispute, while under the amendment, disqualification, on account of the existence of a "labor dispute in active progress" cannot exceed eight weeks.

What is the purpose of the amendment and why was it adopted? By it the legislature deleted the phrase (unemployment) "due to a stoppage of work which exists because of a labor dispute" and inserted, in lieu thereof, (unemployment) "due to a labor dispute which is in active progress." The amendment was adopted to cover a situation where a serious labor dispute exists yet it does not result in stoppage of work at the plant—the Employer with the help of those who remain after a strike has been called and with such additional help as he may be able to recruit, continues his operation in spite of the dispute and in spite [226] of the existence of a strike; in such a case, the men involved in the dispute, then in progress, if

they have become unemployed on account of it, are disqualified to receive unemployment benefits; the advocates of the amendment further claimed that the period of disqualification, due to the existence of a labor dispute, should be limited to a definite time and as the records of the United States Department of Labor show that few strikes last over eight weeks, this period was adopted.

The Alaska Act does not define "Labor Dispute" nor what constitutes a "Labor dispute in active progress."

The National Labor Relations Act, "Wagner Act") defines "labor dispute" as follows:

"The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

A fair consideration of all the evidence submitted leaves no escape from the conclusion that a labor dispute existed and was in active progress between the Employers and the Union up to the expiration of the dates fixed by the Employers for the consummation of working agreements for the respective plants.

The crucial question is: Did the labor dispute continue after these dates and, if so, when did it terminate, if it became terminated at all?

A dispute, or other transaction, it would seem, continues in active progress when one or the other or both disputants, or parties to it, are active concerning it, not passive, when action is taken in relation to it and not when it is permitted to become dormant, for whatever may be the reason. In this case, nothing was done with the matters in dispute after the expiration of the respective dates mentioned, in fact there is a plain implication in announcing these dates that after their expiration no further efforts would be made to bring about an agreement and that the incident would be considered at an end, closed, and disposed of. And so it was treated by both parties. No action was taken by either of them to resume negotiations, no strike was called by the Union nor did the Employers declare a lockout. Both parties ceased from doing anything concerning the situation.

If, as claimed by counsel for the Employers, the dispute continued at least as long as the 1940 season, we may ask: When did it end? [227] Why limit it to the 1940 season? If the Employers were to decide in 1941 not to operate because no agreement was reached in 1940, would not the dispute then be held to be in active progress during that season also and the men remain unemployed on that account and, under the argument of the Employers would continue to remain unemployed until the Employers decided to commence operations again. Like Banquo's ghost, or John Brown's soul, the dispute would walk or march until the Employers saw fit to lay it low.

The Employers called off the 1940 operations and thereby put an end to the negotiations and the dispute which had raged between them and the Union. The operations have been abandoned, what was there to dispute about? The matter had become a closed incident—"a dead horse" as the man in the street would say.

In the brief of counsel, numerous references are given to definitions of what constitutes a labor dispute, but none is found dealing with the precise point under consideration and it is fair to say there is none.

Cases are found in the books where miners, in the Apalachian Fields, had contracts with their employers similar in some respect to those entered into between the Union and the Employers in this case and it has been held in Tennessee, which has disqualifying provisions like the one found in our act and now under consideration, that coal miners, during a cessation of activities, were deemed unemployed because of a labor dispute in active progress when the employer and the Union could arrive at no agreement within a period set aside for negotiations and the mines were shut down and remained shut down up to the time of the hearing and they were held disqualified for benefits on account thereof.

These cases are readily distinguishable from the case at bar. In the Miners' case the operations were not seasonal and the dispute was carried on and continued until the re-opening of the mines. In our case there was no possibility of a re-open-

ing; the time to get ready to catch the fish which the Union was expected to put up had passed and the particular operation had on account thereof become impossible. There was here no time for reconsideration; the die was cast and the Rubicon crossed; there was no possibility of turning back the clock. Preparations for the 1940 operations, if to be carried on at all, were unalterably set to begin at a definite time fixed [228] by the Employers. After that time, they became impossible of performance. The time having expired without reaching an agreement, the operations were called off, the negotiations terminated and the active progress of the labor dispute which had raged for a couple of months came to an end.

It is my opinion that the labor dispute ceased to be in active progress with reference to the Karluk situation on April 10th—five days after the opening of the annual season there; it ceased to be in active progress at the Chignik plant on April 12th—twelve days after the opening of the season there and it ceased to be in progress with reference to operations in Bristol Bay May 3rd,—two days before the opening of the season there, as fixed by Benefit Regulation 10 promulgated by the Alaska Unemployment Compensation Commission and that claimants became unemployed after those dates, not account of the existence of a labor dispute in active progress but because there was no employment to be had at these places and that a disqualification on account of the existence of a labor dispute in active progress, after the respec-

tive dates mentioned, is not justified under the facts as found and the law as I believe it to be.

The Referee is conscious of the fact that his conclusion, if sustained by the Commission or the Court, will mean the practical exhaustion of the Unemployment Compensation fund of the Territory but this is due to the wording of our Unemployment Compensation Act and not to any other cause and is a matter for the Legislature to consider and not the Referee.

For the reasons hereinbefore stated, the Referee determines: First: That from April 5th to April 10th, 1940, a labor dispute was in active progress with reference to the operation of the Karluk plant operated in 1939 by the Alaska Packers Association;

Second: That from April first to April twelfth, 1940, a labor dispute was in active progress involving operation of the Chignik plant operated in 1939 by Alaska Packers Association;

Third: That at the time of the commencement of the season in Bristol Bay no labor dispute was in active progress at any of the plants operated in that District in 1939. [229]

It follows that:

First: The claims filed by the 1939 Karluk employees for unemployment compensation for the period between April 5th to April 11th, 1940, should be denied;

Second: The claims filed by the 1939 Chignik employees for unemployment compensation for the

period between April 1st and April 13th, 1940, should be denied;

Third: That the claims filed by the 1939 Bristol Bay employees for unemployment compensation after May 5th, 1940, should be allowed; and

Fourth: That the claims filed by any of the 1939 Karluk and Chignik employees after the respective dates mentioned should be allowed; all of said claims to be subject to the statutory waiting period and other provisions of the Alaska Unemployment Compensation Law concerning eligibility to unemployment compensation of all or any of the claimants.

September 21, 1940. [230]

Before the Unemployment Compensation
Commission of Alaska

Starting November 14, 1940, at Juneau, Alaska

In the Matter of the Claims

of

FRANK L. ARAGON, and other applicants, Mem-
bers of the Alaska Cannery Workers Union,
Local No. 5,

Applicants,

and

ALASKA CANNERY WORKERS UNION LO-
CAL No. 5,

On behalf of Applicants,

FOR UNEMPLOYMENT BENEFITS.

ALASKA PACKERS ASSOCIATION, RED
SALMON CANNING COMPANY & ALAS-
KA SALMON COMPANY,

Respondents.

DECISION ON APPEAL

of

Alaska Unemployment Compensation Commission
(Juneau, Alaska.)

“Appeal Tribunals. To hear and determine
disputed claims, the Commission shall appoint
one or more impartial appeal tribunals con-
sisting in each case of a referee selected in

accordance with Section 11(d) of this Act. No Person shall participate on behalf of the Commission in any case in which he is an interested party”.

(Section 6(d) Alaska Unemployment Compensation Law.)

The statutory provisions involve Section 5 (d) of the Alaska Unemployment Compensation Law, Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws of Alaska, 1939.

* * * * *

This matter came on to be heard before the Alaska Unemployment Compensation Commission, upon an appeal by the respondents-employers, from a determination of the same made by a referee. The referee having found valid the claims of various claimants-appellees of the employers-respondents.

From the record of the testimony taken before the referee, and [231] various exhibits filed with him, it appears that the contentions of the respective parties are as follows:

The employees-appellees, having taken no objections, exceptions or appeal from the findings and conclusions made by the referee, agree with the same.

The employers-respondents claim that the unemployment of the claimants-appellees is due to a labor dispute which was in active progress at the factory, establishment or other premises of which said claimants, and all of them, were last employed during the seasonable working period of

the salmon cannery industry of the Territory of Alaska, as set forth in said Commission's Regulation No. 10.

The stipulation entered into between the parties provides there should be one, and only one, brief filed on behalf of the employees and the employers, and that no oral argument be made before the Commission.

After a careful examination of the testimony adduced before the referee, the exhibits filed with him and the briefs submitted by the interested parties, the Commission makes the following,—

FINDINGS OF FACT

and

REASONS FOR DECISION:

That all of the claimants-appellees were employees of the employers-respondents during the seasonable canning season as set out in Regulation No. 10 of the Alaska Unemployment Compensation Commission for the year 1939. That the employers-respondents notified the various claimants-appellees, through their duly appointed agents, of the cancellation of the working agreement of the year 1939, and of the necessity of entering into a new working agreement for the canning season of 1940. That the agents of the claimants-appellees admitted receipt of the notification of such cancellation, and thereafter entered into negotiations for the canning season of 1940.

That this industry is a seasonable industry, rec-

ognized as such by this Commission in setting forth in its Regulation No. 10, the dates for which unemployment compensation could be allowed by the Commission. That the claimants-appellees were fully aware of this condition, as were the employers-respondents. That the dates of operation of canneries in the various sections involved in this controversy, as set out in said Regulation 10, which was adopted by the Commission November 6, 1938, are as follows: [232]

Kodiak Island District, which includes all operations on the Karluk River, one season, April 5th to September 25th;

Alaska Peninsula District, which includes all operations at Chignik, one season, April 1st to September 10th; and

Bristol Bay District, which includes all operations in Bristol Bay, one season, May 5th to August 25th.

That the following the notification by the employers-respondents to the claimants-appellees that the employers-respondents elected to cancel the working contract entered into between said parties for the canning season of 1939, and that the same would not be in force for the canning season of 1940, and the necessity of entering into another agreement, negotiations for such an agreement were entered into between said parties and were in active progress at the opening of the canning season as set forth in said Regulation No. 10. That there is evidence before this Commission that no agreement was ever entered into between the interested parties prior to the opening of the season or thereafter.

In the Declaration of the Territorial Public Policy set forth in the first paragraph of the Act creating the Unemployment Compensation Commission, Chapter 4 Extraordinary Session Laws of 1938 as amended by Chapters 1 and 51, Session Laws, 1939, the Legislature of Alaska declares:

"The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this Territory, require the enactment of this measure under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own".

The question to be decided by this Commission is if the claimants-appellees are entitled to the benefits of unemployment compensation, as provided for by said Act, through no fault of their own.

CONCLUSION AND DECISION

We conclude that the claimants-appellees and the employers-respondents were engaged in a seasonable industry;

That there was an active labor dispute existing between said parties at the opening of the season; that said dispute continued, and that paragraph (d) under Section 5, under the title "Disqualification for Benefits" provides: [233]

That any individual shall be disqualified "For any week with respect to which the Commis-

sion finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute"—

And that each claimant-appellee, is entitled to receive, if otherwise eligible, unemployment insurance as follows:

At the Karluk Cannery eight (8) weeks after April 5th; at the Chignik Cannery, eight (8) weeks after April 1st, and at the Bristol Bay Cannery eight (8) weeks after May 5th, said eight weeks disqualifying period being in addition to the two (2) weeks regular two weeks waiting period, and if otherwise eligible.

The Decision and Conclusion of the referee are hereby reversed, and benefits allowed in accordance with the Commission's initial determination.

Absent from this hearing, one member of the Commission, viz, Dr. Noble Dick.

Dated at Juneau, Alaska, this 18th day of November, 1940.

ALASKA UNEMPLOYMENT
COMPENSATION COMMISSION.

By: R. E. HARDCASTLE,
Chairman.

Attest: R. S. BRAGAW,
Secretary. [234]

[Title of District Court and Cause.]

PETITION FOR REVIEW

Of Decision of Unemployment Compensation Commission of Territory of Alaska

(Pursuant to Alaska Unemployment Compensation Act, Ch. 4, Extraordinary Session Laws of 1937, as amended by Cha. 1 and 51, Session Laws, 1939 (Section 6 (i)) [235])

Plaintiffs and each of them file this, their Petition for Review of a Decision of the Unemployment Compensation Commission of Alaska, and in support thereof present and show the following:

I.

That this is a Petition for Review of a decision of the Unemployment Compensation Commission of Alaska made on November 18, 1940 in the case titled "Frank L. Aragon, and other Applicants, Members of the Alaska Cannery Workers Union, Local No. 5, Applicants, and Alaska Cannery Workers Union Local No. 5, on behalf of Applicants, For Unemployment Benefits, and Alaska Packers Association, Red Salmon Canning Company, and Alaska Salmon Company, Respondents", which decision was adverse to petitioners herein.

That a copy of said Decision is attached hereto and marked Exhibit "A", and is hereby expressly referred to and incorporated herein and made part hereof by this reference the same as though fully set forth hereinafter.

II.

That this Petition for Review of said Decision is brought pursuant to and this Court has jurisdiction under the Alaska Unemployment Compensation Act (hereinafter called the Act), Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws, 1939, Section 6 (i), of the Territory of Alaska.

III.

That the defendant Unemployment Compensation Commission of Alaska (hereinafter called Commission) is, and during all the times herein mentioned was the body duly created and authorized by the Act to administer said Act, and the defendant R. E. Harcastle, R. S. Bragaw and Noble Dick are, and during all the times herein mentioned were the duly qualified and acting members of, and constituted said Commission, and rendered the Decision referred to in Paragraph I. That said Commission and Commissioners maintain their office at Juneau, Territory of Alaska.

IV.

That defendant Alaska Packers Association is a corporation which is and for a number of years last past has been engaged in the taking and canning of salmon in the Territory of Alaska and is subject to [236] the Act. That said company was a respondent and party to the proceeding before the Commission mentioned in paragraph I herein, and is therefore made a defendant herein as required by Section 6 (i) of the Act.

V.

That defendant Red Salmon Canning Company is a corporation which is and for a number of years last past has been engaged in the taking and canning of salmon in the Territory of Alaska and is subject to the Act. That said company was a respondent and party to the proceeding before the Commission mentioned in paragraph I herein, and is therefore made a defendant herein as required by Section 6(i) of the Act.

VI.

That defendant Alaska Salmon Company is a corporation which is and for a number of years last past has been engaged in the taking and canning of salmon in the Territory of Alaska and is subject to the Act. That said company was a respondent and party to the proceeding before the Commission mentioned in paragraph I herein, and is therefore made a defendant herein as required by Section 6(i) of the Act.

VII.

That Alaska Cannery Workers Union, Local No. 5 (hereinafter called the Union) is an unincorporated association and labor union and throughout the proceedings mentioned in paragraph I herein appeared for and on behalf of individual petitioners who at said time were and still are members of said Union, and the Union appears in this action for review for and on behalf of all individual petitioners involved in said proceeding mentioned in paragraph I.

VIII.

That Frank L. Aragon and all the other individual petitions are workers in the Alaska Salmon industry and during the 1939 Alaska salmon season various individual petitioners were employed by Alaska Packers Association, various individual petitioners were employed by Red Salmon Canning Company, and various individual petitioners were employed by Alaska Salmon Company, and which of said individual petitioners were employed by which of said companies is a matter of record in the files of the Commission, which records are hereby referred to and incorporated herein and made a part hereof by this reference. That the names of all said individual petitioners are not listed herein, but this Petitioner for Review is brought by and on [237] behalf of all such individuals who were parties to or whose right to benefits were determined in the proceedings mentioned in paragraph I herein. That the names of said individual petitioners are not listed herein because it was ruled by the Commission that the decision in the case mentioned in paragraph I would apply to all claimants who had filed for benefits with the Commission who are members of the Union insofar as the eight weeks' disqualification for alleged labor dispute within the meaning of Section 5(d) of the Act is concerned, and that since this is a Petition for Review it is unnecessary to list herein all such individual petitioners. In connection with the allegations of this paragraph, reference is made to the correspondence in the files of the Commission between the Commis-

sion, the Union, and counsel for the Union on the subject that these proceedings apply to and will determine the rights of all claimants who are members of the Union, and reference is further made to the ruling of the Special Referee which appears at page 7 of the Transcript of the proceedings described in paragraph IX herein, and said correspondence and ruling are incorporated herein by this reference and made part hereof the same as though they were fully set forth herein.

IX.

That on June 17, 18, and 19, 1940, a hearing was held in San Francisco, California before Henry Roden, Esq. who was designated by and served as Special Referee for the Commission pursuant to the provisions of the Act to determine the question of the labor dispute disqualification, if any, of applicants (petitioners herein). That at said hearing the individual petitioners, and the Union in their behalf, appeared and offered evidence to support their contention that petitioners were not disqualified on account of any labor dispute in active progress within the meaning of Section 5(d) of the Act, and the defendant canning companies appeared and contested the contention of petitioners. That thereafter and on September 21, 1940, Referee Roden rendered his decision that there was a "labor dispute", but that it was not in "active progress" at Karluk after April 10, 1940, nor a Chignik after April 12, 1940 and that at Bristol Bay there was no "labor dispute" in "active progress" at the time

the season opened, to-wit: on May 5, 1940; and that applicants (petitioners herein) should be paid benefits accordingly. That the decision of Referee Roden which is on file with the Commission in this case is hereby expressly referred to, incorporated [238] herein and made part hereof by this reference the same as though fully set forth herein.

X.

That defendants Alaska Packers Association, Red Salmon Canning Company, and Alaska Salmon Company on October 3, 1940, filed notice of appeal with the Commission from the decision of the Referee mentioned in paragraph IX herein. That said appeal was thereafter by the Commission heard and determined as described in paragraph I herein, and the decision of the Referee was reversed by the Commission.

XI

That petitioners have exhausted their administrative remedy before the Commission as provided by the Act and as required by Section 6(h) of the Act before bringing this action for judicial review.

XII.

That pursuant to the provisions of Section 6(i) of the Act, petitioners state the following as grounds upon which this review is sought and for which the decision of the Commission mentioned in paragraph I should be reversed:

1. CERTAIN FINDINGS OF FACT MADE BY
THE COMMISSION ARE NOT SUPPORT-
ED BY THE EVIDENCE.

a. The Commission found as a fact that “negotiations for (a 1940) agreement were entered into between said parties (employers and union) and were in active progress at the opening of the canning season as set forth in said Regulation No. 10.”
(Our underlining.)

Argument and exception to said finding:

(1) Regulation No. 10 provides that the Bristol Bay season was to open on May 5, 1940. The evidence offered by the employers themselves (and petitioners do not dispute it) shows that the negotiations for the Bristol Bay operations terminated at midnight May 3, 1940, and that the employers abandoned the season at that time which they had fixed as their “deadline” to reach a 1940 agreement with the Union. (See Employers’ Exhibit “X”, Applicants’ Exhibit “19”, Tr. p. 226, 228, 232, testimony of J. Paul St. Sure. See also decision of Special Referee Henry Roden, p. 2, and p. 10, finding that negotiations for Bristol Bay terminated at midnight May 3, 1940, and that the employers abandoned the Bristol Bay Season at that time.)

[239]

It follows without answer that the Commission’s finding of fact that negotiations were in active progress at the opening of the season as fixed by Regulation No. 10 is in error and not supported by the evidence insofar as the Bristol Bay operations are concerned.

(2) In addition, the Alaska Salmon Company abandoned its entire 1940 operations on April 30, 1940, five days before the season at Bristol Bay opened. (See Applicants' Exhibit "2".) This company operates only at Bristol Bay. (Tr. p. 304, testimony of Mr. Peterson.) It follows that the applicants employed in 1939 by Alaska Salmon Company are unquestionably entitled to benefits, and the Commission's finding is in error insofar as the Commission finds that Alaska Salmon Company was carrying on active negotiations at the time of the opening of the Bristol Bay season as fixed by Regulation No. 10.

We conclude that there were no negotiations for Bristol Bay after May 3, 1940 and that all applicants employed at Bristol Bay in 1939 are without question entitled to benefits for the full season and are subject to no labor dispute disqualification. This includes all the 1939 employees (members of the Union) of Alaska Salmon Company and Red Salmon Canning Company, who operate only at Bristol Bay; and those employees of Alaska Packers who were employed at Bristol Bay in 1939.

b. The Commission found as a fact that the employers notified the applicants "of the necessity of entering into a new working agreement for the canning season of 1940." (Our underlining.)

Argument and exception to said finding:

(1) Insofar as this finding means that a new agreement was to be reached between the parties for the 1940 season is there was to be operation by the San Francisco operators, the finding is proper

and supported by the evidence. But insofar as it leaves the inference that the operators were ready to sign an agreement but the Union was not, the finding is not supported by the evidence. The operators wanted to sign a 1940 agreement on terms less favorable to the Union than the Union enjoyed in 1939. The onus cannot be placed on the Union for failing to arrive at an agreement. The blame, if it belongs anywhere, rests with the [240] employers who without justification or reason wanted the Union to accept less favorable terms and conditions than the workers enjoyed in 1939, while the Union wanted at least a renewal of the 1939 agreement. The applicants were at all times ready, willing and able to work on 1939 wages and terms. (See Tr. p. 333, p. 335-336.) The use of the word "necessity" is therefore not supported by the evidence insofar as the inference is left that the employers were not at fault in the failure of the parties to reach an agreement for the 1940 season.

(2) Alaska Salmon Company abandoned *it* 1940 operation on April 30, 1940 (Applicants' Exhibit "2"), and would not have operated during 1940 irrespective of whether there had been or had not been an agreement with the Union. (See Tr. p. 320, stipulation by Mr. Oliver, counsel for Alaska Salmon, to that effect.)

It follows that the operators and particularly Alaska Salmon Company did not find it "necessary" to reach an agreement for the 1940 season.

2. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE FINDINGS OF FACT.

(a. The Commission concluded that "there was an active labor dispute existing between the parties at the opening of the season."

This conclusion must be separated into its two parts: first, that that was a "labor dispute" and second, that there was an "active labor dispute at the opening of the season".

The Commission's "findings of fact" can be briefly summarized as follows:

1. That all applicants were employees of the employers during the 1939 seasonal canning industry as provided in Regulation No. 10.

2. That the employers cancelled the 1939 agreement with the Union.

3. That the employers notified the Union of the "necessity" of entering into a new agreement for the 1940 canning season. [241]

4. That the Union admitted receipt of the notice of cancellation of the 1939 agreement.

5. That thereafter, negotiations for the 1940 season occurred.

6. That the salmon cannery industry is seasonal.

7. That dates for which unemployment benefits could be allowed were provided by Regulation No. 10.

8. That employers and applicants were aware of this condition.

9. That the dates of operation of the canneries

in the districts involved in this controversy as fixed by Regulation 10 are as follows:

Karluk: April 5-September 25;

Chignik: April 1-September 10;

Bristol Bay: May 5-August 25.

10. That following the notice of cancellation of the 1939 agreement by employers, negotiations for a 1940 agreement between the parties commenced.

11. That the negotiations were in active progress at the opening of the season as set forth in Regulation No. 10.

12. That no agreement was ever entered into between the parties prior to the opening of the season, or thereafter.

13. Quoting from the Declaration of Territorial Public Policy of the Act that benefits were to be paid to persons unemployed through no fault of their own.

(1) Petitioners submit that these findings do not support a conclusion that a "labor dispute" existed between the parties. All that can be concluded from the Commission's findings is that the parties negotiated for, but did not arrive at a 1940 agreement. We submit, that is not a "labor dispute" within the meaning of the Act. There are no findings to support a conclusion that a "labor dispute" existed.

(2) Plaintiffs submit that these findings do not support the conclusion that there was an "active labor dispute existing between the parties at the opening of the season". (Our underlining.) The Commission has failed to separate the various areas

of operation with regard to the opening of the season. For the sake of argument (but not admitting it) let us say a "labor dispute" occurred between the parties. The employers [242] abandoned the Chignik operation on April 12, 1940; the Karluk operation on April 10, 1940; and the Bristol Bay operation on May 3, 1940. After those dates, the employers and the Union did nothing with regard to the 1940 season for the respective areas. The parties dropped the matter, the employers called off the season, and in the words of Referee Roden, the parties treated the matter as a "dead horse." (See decision of Referee Roden, p. 2, pp. 17-18; Employers' Exhibits "U" and "X"; Applicants' Exhibits "2" and "19.")

Bear in mind that the seasons opened as follows:

Karluk, April 5th;

Chignik, April 1st;

Bristol Bay, May 5th.

While it may be argued that the "labor dispute" was in active progress with respect to Chignik and Karluk by reference to the above dates at the opening of the season in those areas, the same thing cannot be said for Bristol Bay. There the "dispute" terminated, the negotiations ended, and the season was abandoned on May 3, 1940 two days before the season opened. We submit that there was no "active labor dispute" at Bristol Bay at the "opening of the season" there.

Therefore, the conclusion that "an active labor

dispute existed between the parties at the opening of the season" is not supported by the findings of fact.

b. The Commission concluded that "the dispute continued". (Our underlining.)

That conclusion is not supported by the findings. There are no findings that the dispute (if there was one) continued to any particular day with reference to any of the three areas in question. Nor is there any conclusion regarding the day to which the "dispute" continued. For all that appears from the decision, the dispute still continues and will continue to continue, and there is no indication as to when it will end if ever. As a matter of fact, the dispute, if there was one, ended with regard to Karluk on April 10, 1940; at Chignik on April 12, 1940; and at Bristol Bay on May 3, 1940; all as noted above.

c. The decision reversing the Referee, and disqualifying petitioners for eight weeks each is in error, because as indicated above there are no findings to support a conclusion that a labor dispute existed, or that if there was a dispute, [243] that it continued beyond the dates mentioned for the respective areas; and the decision is in error in disregarding the uncontradicted evidence that the negotiations for Bristol Bay ended, and the season for that area was abandoned, on May 3, 1940, two days before the season was to open.

.

3. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE EVIDENCE.

A. The conclusion that there was a "labor dispute" is not supported by the evidence.

The uncontradicted evidence shows that the Union did not declare a strike, and did not picket the employers, and did not strike or picket because there was no operation to strike or picket; that there was no employer-employee relationship existing between the parties at the beginning of the 1940 season; that the last time the petitioners were employees of the employers or on their payroll was at the conclusion of the 1939 season, and when that season ended, the employee-employer relationship between the parties ended.

The evidence further shows that the employers wanted the Union to accept a reduction of the 1939 San Francisco contracts, and only offered the Union either the 1939 or 1940 Seattle agreement, whichever was most favorable to the Union. That the employers never retreated from this stand. That the Union proffered a 1940 contract which was more advantageous to it than the 1939 San Francisco contract. That this was rejected by the employers, and the Union finally offered to re-execute the 1939 San Francisco contract, which the employers refused. That the Employers abandoned their respective operations as their stated "deadlines" occurred; Karluk, April 10, 1940; Chignik, April 12, 1940; Bristol Bay, May 3, 1940. That thereupon the matter was dropped by both parties, and nothing

further was done between them with regard to the 1940 season. There were meetings between the parties for negotiation purposes. The evidence shows that the negotiations were carried on in a friendly manner. The petitioners were ready, able and willing to work in 1940 on the same wages and conditions that they enjoyed out of San Francisco in 1939. That Alaska Salmon Company would not have operated in 1940 even if an agreement had been reached with the Union. That the Alaska Packers were going to curtail their operations and employment at Bristol Bay one-third on account of the government [244] ordered curtailment in fishing.

We submit that these facts do not show a "labor dispute" within the meaning of the Act.

b. The Conclusion that there was an "active" labor dispute is not supported by the evidence.

It has been fully stated hereinabove (and reasons and citations given) that if there was a dispute, it was not in active progress at Karluk after April 10, 1940;; nor at Chignik after April 12, 1940; nor at Bristol Bay after May 3, 1940. So Referee Roden found, and the evidence and reason support that finding (Decision of Referee, pp. 17-18) and the Commission does not examine nor dispute this finding. The Commission merely lays down an unsupported conclusion and fiat that a dispute was in "active" progress.

The Act provides that a labor dispute, to disqualify an applicant, must be in active progress with respect to "any week" for which the applicant

is disqualified. In other words, if there is a dispute in existence for one week, that disqualifies the applicant only for that one week, but not thereafter. Therefore, if there was a dispute, it ended at Karluk on April 10, 1940, and at Chignik on April 12, 1940, and applicants last employed in 1939 in plants at those areas are not disqualified after those dates that the dispute was not in "active" progress.

With regard to Bristol Bay, the dispute ended on May 3, 1940 two days before the season opened. Petitioners would not be entitled to benefits until the season opened on May 5, and at that time there was no dispute in active progress. The dispute was then a thing of the past. Therefore, there is no disqualification with regard to the employees who were last employed in 1939 in Bristol Bay.

Furthermore, an "active" labor dispute, means a strike and picket line, an operation which is interrupted by such dispute. It is admitted that there was neither strike nor picket line here, nor could there be, because the workers never started to work in 1940; there was no job to strike; no employer-employee relationship to terminate. Therefore, there was no labor dispute in "active" progress. A dispute in active progress would mean that there would be a way to end it, and therefore if the workers started it (thereby disqualifying themselves) they could end it, thereby removing the disqualification). But here, the employers abandoned the season on their "deadline" dates, and that was [245] all there was to the 1940 season so far as these petitioners are concerned.

c. The conclusion that the dispute "continued" is contrary to the evidence.

It has already been adequately set out herein that the dispute (if there was one) ended on the dates the employers abandoned their respective operations, and that the dispute became a dead letter on those dates. The Commission's conclusion that the dispute "continued" could mean that the dispute continued indefinitely and in fact still continues. That conclusion, or any conclusion that the dispute continued after the dates set out hereinabove, is contrary to the evidence.

d. The decision is in error in that there is neither finding nor conclusion that petitioners' unemployment during the 1940 salmon canning season was "due" to a labor dispute in active progress at the premises where last employed (which means at the conclusion of the 1939 season), and not "due" to other causes.

The Commission merely found a "labor dispute" and disqualified applicants. The Commission does not consider whether applicants were unemployed at Alaska Packers because of the curtailment. It is admitted that this company, if it operated during 1940, was going to hire one-third fewer workers than in 1939, at least at Bristol Bay operations. (Tr. p. 270, testimony of Mr. Tichenor.)

It is admitted that Alaska Salmon Company would not have operated in 1940 even had an agreement with the Union been signed. (Tr. p. 320) Therefore, it would follow that the Employees of Alaska Pack-

ers (at Bristol Bay) and Alaska Salmon would not be disqualified in any event because their unemployment would not be "due" to a labor dispute. Insofar as it would be difficult to determine which one-third of the employees last employed by Alaska Packers at Bristol Bay would be unemployed during 1940 because of the curtailment, the doubt must be resolved in favor of the applicants, because the Act is remedial in nature and therefore must be liberally construed so as to pay, and not to deny benefits, and therefore all applicants so employed in 1939 should not be subject to any "labor dispute" disqualification.

Finally, petitioners' unemployment is "due" to the seasonal lay-off; that is, petitioners became unemployed when the 1939 season ended, and never became reemployed for 1940. Therefore, their unemployment is due to the seasonal nature of their work, and not to any alleged labor dispute. [246]

4. THE FINDINGS OF FACT MADE BY THE COMMISSION COMPEL A DECISION CONTRARY TO THE ONE RENDERED.

The findings show that the employers cancelled the 1939 contract, and that negotiations occurred between the parties, but that the parties did not arrive at a 1940 agreement. Therefore, it appears that had not the employers cancelled the 1939 contract, operations would have taken place during 1940 on the basis of the 1939 contract which would have continued in existence. Therefore, the onus falls on the employers because it was their affirmative action which started the "dispute" and petitioners are unemployed not through their fault but because

of the employers' actions in attempting to undercut 1939 wages and conditions.

Nor do the findings of fact establish any labor dispute. They only show negotiations which were not consummated by agreement. They show no strike, no walk-out, no picket line, no presently existing employer-employee relationship terminated, in fact, no job to strike. It follows that the findings made, and the absence of other findings necessary to show a labor dispute, compel a decision that there was no *labor*

5. THE EVIDENCE AND A PROPER CONSIDERATION OF THE CASE REQUIRES FINDINGS OF FACT ON MATTERS WHICH THE COMMISSION IGNORED.

The Commission did not make findings on the following matters necessary to a proper consideration of the case:

1. What facts are necessary to show a "labor dispute" within the meaning of the Act? Must there be a strike, walk-out, presently existing employer-employee relationship terminated by dispute, picket line, a job to strike? What bearing does the absence of these factors have in the instant case?

2. Is petitioners' unemployment "due" to a labor dispute, or is it "due" to the curtailment in Alaska Packers' Bristol Bay operations, and the failure of Alaska Salmon to operate for reasons unconnected with labor, and finally is not the unemployment of petitioners "due" to the seasonal nature of

their work and the fact that they were never re-employed in 1940, rather than an alleged "labor dispute"?

3. If there was a dispute, how long did it remain in "active" progress? Did not the dispute terminate when the employers abandoned their operations, for Karluk on April 10, 1940; Chignik on April 12, 1940; and Bristol Bay on May 3, 1940? Was not the Referee [247] correct in so finding, and was not the Commission in error in not considering this fundamental finding, and indicating where it was wrong, if it was wrong?

4. In what way do negotiations which do not result in a contract constitute a labor dispute within the meaning of the Act?

6. THE DECISION IS CONTRARY TO LAW.

1. The decision is wrong in holding that the facts in this case constitute a "labor dispute" within the meaning of the Act.

2. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act when the season opened, and that the dispute "continued".

3. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act after April 10, 1940, at Karluk, April 12, 1940 at Chignik, and after May 3, 1940 at Bristol Bay.

4. The decision is wrong in holding that petitioners' unemployment is "due" to a labor dispute.

The Commission has decided that where an employer cancels a collective bargaining agreement with a union and in its stead seeks to establish a contract giving lower wages and poor conditions to the workers and the workers refuse to accept the same, as a result of which the employers abandon operations in a seasonal industry, work for the new season never having started, that this constitutes a "labor dispute in active progress" for the entire season of said seasonal industry within the meaning of the Act, and disqualifies the workers for benefits for a period of eight weeks as provided by the Act.

In petitioners' opinion, this is a plain misinterpretation of the Act, is contrary to the better reasoned decisions on the subject of what constitutes a "labor dispute in active progress" within the meaning of the unemployment insurance laws, and violates the spirit and purpose of the Act. The facts in this case do not constitute a "labor dispute" within the meaning of the Act as a matter of law.

If the Commission's decision is allowed to stand, it is an invitation to employers to cut wages (even though no basis exists or is offered) and if workers refuse to accept the cuts, then they also shall be denied unemployment benefits. The Act would thus operate to hurt rather than help workers as is its declared purpose. [248]

Unemployment laws are remedial in nature. They are to be liberally construed, and every intendment is in favor of paying benefits rather than denying them. All doubts must be resolved in favor of petitioners.

The "labor dispute" disqualification is included in the Act only so that these funds will not support a strike. The eight weeks period was fixed because the records and figures on labor disputes show that the average length of a strike is eight weeks. (See Decision of Referee, pp. 16-17) There was no "dispute" or "strike" here which unemployment funds were sought to finance. There was only a failure to negotiate a 1940 contract, and abandonment by the packers of the 1940 season, even though the workers were ready, willing, and able to work on the same contract that they had in 1939. Certainly the workers' position was a fair one. They were unemployed through no fault of their own, and if the blame belongs anywhere, it is with the employers who tried to cut wages and conditions. A liberal construction of the Act, and serving the purposes for which the Act was adopted compel a decision in favor of petitioners.

XIV.

That the Commission found that the "employees-appellees (petitioners), having taken no objection, exception or appeal from the findings and conclusions of the referee, agree with the same". Petitioners allege that since the employers appealed the case, the entire matter was opened on review to the Commission, and is similarly opened before this Honorable Court. That insofar as petitioners raise matters herein which are *it* issue with the findings and conclusion of the Referee, as well as of the Commission, they are not precluded from raising

those matters because they were satisfied to rest with the *Referee*' decision. Had employers taken no appeal from the Referee's decision, petitioners would have rested. Since the appeal was taken by the employers, petitioners took issue with various parts of the Referee's decision before the Commission, and renew those objections here.

Wherefore, petitioners pray judgment against defendants as follows:

(1) That this Honorable Court review and reverse the decision of the Commissioner insofar as petitioners were disqualified for a period of eight weeks each because of an alleged "labor dispute", [249] and find petitioners not disqualified for said alleged cause;

(2) That the decision of the Commission of November 18, 1940 be set aside, and that the decision of Referee Henry Roden of September 21, 1940 in the within matter be adopted by, and given effect by this Honorable Court; ;

(3) For costs of suit herein, and for such additional and further relief as is just and meet in the premises.

Dated: January 3rd, 1940.

ANDERSEN & RESNER

Attorneys for Petitioners.

[Endorsed]: Filed Jan. 7, 1941. [250]

[Title of District Court and Cause.]

Received January 8, 1941 Civil Docket No. 11211
For service by Deputy Thompson.

(No. 4620-A)

SUMMONS

To _____, Defendant--,

Greeting:

In the Name of the United States of America,
You, and each of you, are hereby commanded to be
and appear in the above-entitled Court, holden at
_____ in said Division of said
Territory and answer the complaint filed against
you in the above entitled action, within thirty days
from the date of the service of this summons and a
copy of the said complaint upon you, and, if you
fail so to appear and answer, for want thereof, the
plaintiff--- will take judgment against you, and
each of you, for the sum--- specified in said com-
plaint, and will apply to the Court for the relief
demanded therein, a copy of which said complaint
is herewith served upon you. The relief demanded
therein is,

PETITION FOR REVIEW

of Decision of Unemployment Compensation Com-
mission of Territory of Alaska (Pursuant to Alaska
Unemployment Compensation Act, Ch. 4, Extraor-
dinary Session Laws of 1937, as amended by Chs.
1 and 51, Session Laws, 1939, Section 6 (i))

And you, the United States Marshal of Division No. 1 of the Territory of Alaska, or any Deputy, are hereby required to make service of this summons upon the said defendant---, and each of them, as by law required, and you will make due return hereof to the Clerk of this Court within forty days from the date of its delivery to you, with an endorsement hereon of your doings in the premises.

In Witness Whereof I have hereto set my hand and affixed the Seal of the above Court, at Juneau, Alaska, this 7th day of January, A. D., 1941.

[Seal]

ROBERT E. COUGHLIN

Clerk.

By JOHN J. GILMORE

Deputy.

[Endorsed]: Filed Jan. 8, 1941. [251]

United States of America

Territory of Alaska

Division Number One.—ss.

I, William T. Mahoney, United States Marshal for the First Division, Territory of Alaska, hereby certify that I received the within summons at Juneau, Alaska on the 8th day of January, 1941 and that thereafter I served the within summons at Juneau, Alaska on the Defendants, Walter P. Sharpe, Executive Director of the Unemployment Compensation Commission, personally and in person on the 8th day of January, 1941 by then and there delivering

to and leaving with said defendant a copy of the within summons, together with a copy of the complaint in this case, which said copy of summons and complaint so served on defendant were duly certified to by Herbert Risner, Attorney for plaintiff to be true and correct copies of the original summons and complaint on file in the within cause.

Dated at Juneau, Alaska this 8th day of January, 1941.

WILLIAM T. MAHONEY,

United States Marshal.

By: SIDNEY J. THOMPSON,

Deputy.

Marshal's Fees \$3.10. [251a]

[Title of District Court and Cause.]

RESPONDENTS' ANSWER TO PETITION FOR
REVIEW.

1.

Respondents admit each and every allegation contained in Paragraphs I to ~~II~~, inclusive, of the Petition.

11.

Section 1 of Paragraph XII

Respondents in answer to the allegation in Section 1 of Paragraph XII of the Petition, deny that certain or any Findings of Fact made by the Commission are not supported by the evidence.

1-a-(1)

Respondents admit that the Commission made the finding mentioned in Sub-section 1a, thereof, which is as follows:

“Negotiations for agreement were entered into between said parties and were in active progress at the beginning of the canning season as set forth in said Regulation 10.” (Our underlining)

They also admit that the negotiations terminated two days before the opening of the Bristol Bay season, but not two days before the opening of the canning season. The Commission does not hold that the negotiations continued beyond the dates on which they terminated for the respective districts but refers to the beginning of the canning season generally, simply to show that negotiations were in progress as proof that a dispute existed prior to the actual period during which the fish could have been canned.

[252]

It is not material to this case. The question involved is whether the dispute continued in active progress and not whether the negotiations continued into the seasons for canning the fish. The negotiations were simply evidence of the dispute. If the dispute continued as to Chignik and Karluk, it also continued as to Bristol Bay work, for the whole decision is based upon a recognition of the continuance of the dispute even though negotiations terminated as to Chignik and Karluk soon after the season opened, and as to Bristol Bay just before

the season opened, the opening of the respective seasons being by Regulation 10 set as:

Chignik April 1st

Karluk April 5th, and

Bristol Bay May 5th

(See Regulation 10)

1-a(2)

The argument contained in Sub-section 1-a(2), regarding Alaska Salmon Company, is defeated by the same reasoning. The evidence shows this company abandoned its entire operations on April 30, 1940, and was not interested in any further negotiations, but the dispute continued just the same as it did after May 3rd with the other operators. This question is more fully discussed hereinafter.

1-b(1)

This case does not involve the merits of the respective demands which each party required before signing a contract. It is sufficient to say that no agreement was reached. Respondents find no inference in the finding:

“That the employers-respondents notified the various claimants-appellees, through their duly appointed agents, of the cancellation of the working agreement of the year 1939, and of the necessity of entering into a new working agreement for the canning season of 1940”

that the Commission is placing any onus or blame on either petitioners or respondents. Petitioners' argument seems to be an attempt to introduce a new element in the case which has no place in it. The

Commission does not have to decide which party, if any, was at fault in failing to give in to the other. The Commission can only determine whether or not there was a dispute in active progress during the respective eight-week periods. [253]

1-b-(2)

The fact that Alaska Salmon Company set an earlier deadline by three days than the other two operators is immaterial. It is simply a question of whether their employees were also involved in a dispute, and not a question of when their negotiations terminated. Petitioners say Alaska Salmon Company did not find it necessary to reach an agreement for the 1940 season. An agreement as to the terms of one's employment is always "necessary". Agreements certainly have been necessary and still are necessary between the cannery workers and employers. The failure of the operations was wholly because of the necessity of an agreement before the operations could commence.

Section 2 of Paragraph XII

Respondents deny that the conclusions of law and decision are not supported by the findings of fact.

2-a-(1)

In preparing its findings of fact, the Commission did not actually use the words "labor dispute" but recites the facts regarding the cancellation of the 1939 "working agreement", the negotiations for and failure to arrive at a new agreement. The contention of the petitioners under this sub-section is that these facts do not support a conclusion that

a "labor dispute" existed between the parties. A labor dispute is defined as a controversy over terms and conditions of employment. (see Paragraph 1, Page 5, Respondent's Brief on Appeal to Commission.)

The Commission made the following finding, to-wit:

"That following the notification by the employers-respondents to the claimants-appellees that the employers-respondents elected to cancel the working contract entered into between said parties for the canning season of 1939, and that the same would not be in force for the canning season of 1940, and the necessity of entering into another agreement, negotiations for such an agreement were entered into between said parties and were in active progress at the opening of the canning season as set forth in said Regulation No. 10. That there is evidence before this Commission that no agreement was ever entered into between the interested parties prior to the opening of the season or thereafter."

In effect, the petitioners contend that although the finding refers to negotiations, there is no reference therein as to the subject of the negotiations. The portions of the finding underlined above can support no other conclusion and certainly support the conclusion that "there was an active labor dispute existing between said parties." (See second

paragraph of Conclusion and Decision of Commission.) [254]

2-a-(2)

The argument in the petition under the above numbered part of Paragraph XII, attacks the conclusion that there was an "active labor dispute existing between the parties at the opening of the season."

Petitioners contend that since the Bristol Bay negotiations ended on May 3rd and the season, as set by Regulation 10, opened on May 5th, the labor dispute was not "active at the "opening of the canning season". Such a contention presupposes that you cannot have a labor dispute after the negotiations cease. It is admitted by all the parties that the negotiations terminated as to the respective places of work as follows:

Karluk	April 10th
Chignik	April 12th
Bristol Bay	May 3rd

The seasons opened as follows:

Karluk	April 5th
Chignik	April 1st
Bristol Bay	May 5th

The negotiations, therefore, continued after the opening of the season for Karluk and Chignik, but ended before the opening of the season as to Bristol Bay. The question involved in this case is whether the dispute continued in active progress during the eight weeks following the two-week waiting period after the opening of the respective seasons and not

whether the negotiations continued during these periods. It is immaterial when the negotiations ended if the dispute continued. Respondents submit that a dispute can and did exist in active progress throughout the whole ten weeks after the season opened for each place of work.

Petitioners attempt to attach some importance to the fact that the negotiations terminated two days before the Bristol Bay season opened, but it makes no difference whether they terminated before or after May 5th if the dispute continued throughout the eight weeks in May, June and July, as was found by the Commission. This question is thoroughly discussed in the remainder of this answer and in respondent's affirmative brief on the subject.

2-b

In the petition under this numbered heading petitioners take exception to the conclusion that "the dispute continued", claiming the conclusion is not supported by the Findings. [255]

The Commission made "Findings of Fact and Reasons for Decision" which were followed by a "Conclusion and Decision." In its Findings the Commission sets forth the following uncontroverted facts:

- (1) A new agreement had to be reached for 1940;
- (2) Negotiations were held in an attempt to reach an agreement;
- (3) No working agreement was made;

(4) As a result thereof, no work was performed in the 1940 season.

From these facts the Commission concluded there was "an active labor dispute existing between said parties at the opening of the season: that said dispute continued", and that the law was as set forth in the Conclusion and Decision, and, therefore, the petitioners were entitled to benefits only after the eight weeks of disqualification because of the existence of an active labor dispute during those eight weeks.

Respondents submit that it was not necessary for the Commission to make a finding that the dispute continued, as this is a matter of conclusion determinable from the facts above enumerated. A finding is something to be found in the evidence, and a decision is something which must be concluded from the evidence. Therefore, the decision that the dispute continued was properly in the decision as it is a matter of law and it would be improperly placed if put in the Findings.

Petitioners also object to the lack of a finding to support the conclusion that a labor dispute existed. The same argument is asserted by respondents to this objection as was asserted in the last paragraph hereof. The existence of a labor dispute is a matter of law to be determined from the Findings set forth on the preceding page.

Petitioners also under this numbered heading raise the false assumption that no labor dispute can exist after the negotiations terminate. This as-

sumption is repeatedly denied herein and will be treated at length in a brief submitted by respondents representing the affirmative argument which shows that a dispute can continue after the negotiations for a new contract have terminated between an employer and employees.

3.

Respondents deny that the Conclusions of Law and Decision are not supported by the evidence.

3-a.

Petitioners under this numbered heading contend no labor dispute can exist without picketing, a strike or the existence of an employer- [256] employee relationship. Respondents contend that a strike and picketing are not necessary elements to a dispute nor is it necessary that there be a presently existing employer-employee relationship.

As hereinabove stated, a labor dispute is defined as a controversy over terms and conditions of employment. There is abundant uncontroverted evidence to show the existence of the controversy as to the terms and conditions demanded by each side.

Petitioners contend that there must be an interruption in the work as distinguished from a failure to commence the work at the opening of a season. They contend that an interruption constitutes a strike, but that a failure to work does not constitute a strike. This seems to be splitting hairs uselessly, for either an interruption of work or a failure to commence work is simply evidence of a dis-

pute and sufficient evidence for the Commission to find that a labor dispute existed.

The courts have repeatedly held in labor cases under the jurisdiction of the National Labor Relations Act that men working in seasonal employment, regularly represented by the same bargaining agent and regularly employed for such seasonal work, are considered employees for the purposes of the Act. Even though petitioners were not under the control or on the payroll of the employers, and even though an employer - employee relationship may have existed, such a relationship is not necessary to create a labor dispute under such circumstances. The Commission is entitled to deny benefits to one who refuses to work when work is offered the same as it is entitled to refuse benefits to a man who quits his job. For this purpose a man drawing such benefits must report weekly to an employment office set up under the Social Security Act, and certify that he has been unable to gain employment.

Petitioners also claim that Alaska Salmon Company would not have operated in 1940 even if an agreement had been reached. There is nothing to support this conclusion. It is true that Alaska Salmon Company withdrew from the negotiations on April 30th, but the failure to reach an agreement sooner was one of the principal causes for abandoning its operations. Mr. Roden asked if there were any reasons which compelled the Alaska Salmon Company not to operate irrespective of any difficulties in the negotiations, and the representative

of the Alaska Salmon Company said he could not go that far, but was willing to stipulate that there were factors or causes in addition to a labor dispute. (See Transcript, P. 318.) [257]

Mr. Roden asked Mr. Oliver if the company was financially embarrassed so it could not operate, and Mr. Oliver denied that this was the case. (See Transcript, P. 319.)

Therefore, it can only be said, and it must be said, that the labor dispute contributed materially to the failure of the Alaska Salmon Company to operate in 1940 and caused them to withdraw from the negotiations and abandon entirely the operations on April 30th, although the other companies were willing to negotiate three days longer on Bristol Bay operations. Alaska Salmon Company operates only in Bristol Bay.

3-b.

Under this numbered heading petitioners again raise the assumption that a labor dispute cannot be active unless negotiations are being held for the purpose of reaching a contract. As stated before, this matter will be treated in Respondents' affirmative brief. Respondents contend that a dispute continues in active progress as long as the differences between the parties continue to exist regardless of whether or not they do anything to solve those differences. In this case it was useless to do anything after the deadlines had been reached. These deadlines were the dates set by the operators

after which they could not load the ships, sail for Alaska and be here in time to catch the fish. After the deadlines, the differences between the parties continued to exist, but there was no use in trying to solve them. There is nothing to indicate that either side ever would or could accept the other's offer, either for the 1940 season or for the 1941 season. The differences continue to exist. Neither side has given in to the other, and there is no indication that any agreement will be reached in time to can fish in the 1941 season. The stoppage of work was complete throughout the whole season for each place of operation as the direct result of the dispute and the failure of the parties to reconcile their differences.

As will be shown in Respondents' Affirmative brief, it is a question of what the Legislature intended by the words "in active progress." Petitioners claim that in order for the dispute to be in active progress, there must have been something actively going on, such as picketing, negotiations or "an interruption of operations" as distinguished from a failure to begin operations. They say there must have been a way to end the dispute and an employer-employee relationship during the weeks of disqualification. Respondents contend there [258] need only be a disagreement on terms of employment affecting the operations throughout those weeks, preventing the employer-employee relationship, and preventing the operations from being prosecuted. As will be shown in Respondents' affirmative brief, the latter was the intention of the

Legislature, which would not want unemployment compensation funds to be paid during any period that the operations were affected and production stopped because of a labor dispute.

3-c.

The evidence is conclusive that no canning of fish was done by the operators because of this dispute, the differences were never solved and the dispute continued as a matter of law which must be concluded from the evidence.

3-d.

Petitioners attempt to render the decision of the Commission void because it does not specifically find and decide that the unemployment of petitioners was "due" to a labor dispute in active progress at the premises, and not "due" to some other cause. The Commission had a Referee take the testimony in this case and make a decision. The Referee found the unemployemen "due" to such a labor dispute, and found each and every element for disqualification to have existed except that he was of the opinion that the labor dispute did not continue "in active progress" through the eight weeks for which they had previously been disqualified by the Commission. The hearing before the Commission was to determine only one point, namely: Did the labor dispute continue in active progress throughout those eight weeks? The Commission decided it did, and there was nothing more necessary to decide or find. Petitioners had taken exceptions to the Findings of the Referee or his

decision. They were accepted by petitioners and concurred in by respondents, except insofar as respondents excepted thereto. No exception was taken to this finding of the Referee, and so no re-determination needed to be made on this point.

4.

Respondents deny that the Findings of Fact made by the Commission compel a decision contrary to the one rendered. Petitioners try again to inject a new and foreign element in the case which has no place in it. It is immaterial whether the operators insisted on a new contract or the respondents so insisted. The result was a dispute. There is nothing in the law which makes it necessary for the Commission to pay [259] benefits because somebody cancelled a working agreement or insisted on a new one.

5.

Respondents deny that the evidence and a proper consideration of the case requires findings of fact on matters which the Commission ignored.

In this connection, respondents wish to again point out that the Commission had only one question before it, namely: Did the labor dispute which the Referee found to exist at the beginning of the canning season continue throughout the eight weeks involved, or did it terminate with the termination of the negotiations?

6.

Respondents deny that the Commission's decision is contrary to law.

Respondents admit that the Act is to be liberally construed, but maintain that the liberal construction can only be for the purpose of accomplishing what was intended by the Legislature.

“Laws enacted in the interest of the public welfare, for the protection of human life or the preservation of health—or providing remedies against either public or private wrongs, should be liberally construed with a view to promote the object in the mind of the Legislature.” 59

C. J. 1105, Sec. 656.

Respondents thoroughly cover the subject of the intention of the Legislature in their brief in affirmative support of this answer. There respondents contend it was not the intention of the Legislature that workers should be paid benefits when their unemployment was caused by a disagreement over terms and conditions of employment, regardless of whether there was a strike or a refusal to accept their regular seasonal employment.

Wherefore, respondents pray that the petition of petitioners for review of the Commission's decision in the above entitled matter be dismissed, said decision affirmed and such further relief as is meet in the premises.

Dated at Juneau, Alaska, February 6th, 1941.

GROVER C. WINN,

Attorney for Unemployment
Compensation Commission
of the Terr. of Alaska:
Noble Dick, R. E. Hard-
castle and R. S. Bragaw, as
members constituting said
Commission.

FAULKNER & BANFIELD,
PILLSBURY, MADISON &
SUTRO,

Attorneys for Alaska Packers
Association, Alaska Salmon
Company and Red Salmon
Canning Co., corporations
(Respondents).

[Endorsed]: Filed Feb. 6, 1941. [260]

[Title of District Court and Cause.]

REQUEST TO SET DEFINITE TIME FOR
HEARING OR TO SUBMIT BRIEFS.

Comes now the above named defendants and respondents and respectfully requests that the Court set a time definite for a hearing in the above entitled matter or a time definite within which to submit briefs.

Dated this 6th day of February, 1941.

GROVER C. WINN,

Attorney for Unemployment
Compensation Commission
of the Territory of Alaska:
Noble Dick, R. E. Hard-
castle and R. S. Bragaw, as
Members constituting said
commission.

FAULKNER & BANFIELD,

Attorneys for Alaska Packers
Association, Alaska Salmon
Company and Red Salmon
Canning Company, corpora-
tions. (Respondents)

[Endorsed]: Filed February 6, 1941. [261]

[Title of District Court and Cause.]

STIPULATION SUBMITTING CAUSE ON
BRIEFS

It is hereby stipulated by and between respective counsel that the above entitled cause shall be submitted on briefs only and that there shall be no oral argument before the Court; that petitioners shall have until the 1st day of May, 1941 to file their opening brief; and that defendants and respondents shall have until the 25th day of May, 1941 within which to file their brief; and that petitioners shall have until the 20th day of June, 1941 within which to file their closing brief; after which and whereupon the matter shall be submitted to the Court for decision.

Dated: April 2nd, 1941.

ANDERSEN & RESNER,
Attorneys for Petitioners.

GROVER C. WINN,
FAULKNER & BANFIELD,
Attorneys for Respondents.

By N. C. BANFIELD.

It Is So Ordered

GEO. F. ALEXANDER,
Judge of the District Court.

[Endorsed]: Filed April 3, 1941. [262]

[Title of District Court and Cause.]

OPINION

This cause is here on a petition for review, filed by Frank L. Aragon, on behalf of himself and *other* similarly situated, hereinafter called the "Claimants," as petitioners, against the Alaska Unemployment Compensation Commission, (Hereinafter called "the Commission"); the members of said Commission and the employers involved; and concerns the right of the Claimants to unemployment compensation benefits under the Alaska Unemployment Compensation Act (hereinafter called "the Act"), Chap. 4, Extraordinary Session Laws of 1937, as amended by Chaps. 1 and 51, S. L. 1939, and particularly the question of whether Sec. 5 (d) Chap. 4 Extraordinary Session Laws of Alaska, 1937, as amended by Sec. 5 (d) Chap. 1, S. L. Alaska, 1939 disqualifies the Claimants from receiving benefits

thereunder, it having been decided by the Commission that their unemployment was "due to a labor dispute which was in active progress at the factory, establishment or other premises at which he is or was last employed."

The pertinent parts of Section 5 of Chap. 4 as amended, are here quoted:

"Section 5. Disqualification for Benefits. An individual shall be disqualified for benefits;

Section 5 (d). For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided that such disqualification shall not exceed the eight weeks immediately following the beginning of such dispute; and provided further, that this subsection shall not apply if it is shown to the satisfaction of the Commission that: [263]

1. He is not participating in or directly interested in the labor dispute which caused his unemployment; and

2. He does not belong to a grade or class of workers out of which immediately before the commencement of the dispute there were members employed at the premises at which the dispute occurs, any of whom are participating in or directly interested in the dispute;"

The Claimants here contend they are entitled to be paid full benefits under the Act for their un-

employment during the 1940 Alaska salmon season, or, at least, that the Referee's decision should be restored and given full effect.

Their claims were first considered by an Examiner of the Commission, who denied them benefits, except after the first eight weeks following the opening of the season at the canneries in question, under the provisions of Sec. 5 (d) of the Alaska Unemployment Compensation Act, on the ground that "their unemployment was due to a 'labor dispute' in active progress at the establishment at which they were last employed." Thereafter, a Referee was appointed to take testimony and report his findings and conclusions to the Commission, who denied the claims as to Karluk and Chignik, but upheld them as to Bristol Bay. The matter was then considered by the Commission itself, which overruled the Referee as to Bristol Bay and sustained the Examiner, denying all benefits to the Claimants except after the first eight weeks following the opening of the season at the canneries in question.

Review of the Commission's decision is now sought by the Claimants in this Court, under authority of Section 6 (i) Chap. 4, Laws of Alaska, 1937, which provides:

"(i) Court Review. Within thirty days after the decision of the Commission becomes final any party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such deci-

sion, in which action any other party to the proceedings before the Commission shall be made a defendant.

* * * In any judicial proceeding under this section the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law."

It will be noted that Section 6 (i) provides that:

"* * * In any judicial proceeding under this section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law."

Furthermore, if (Petitioners) Claimants were not satisfied with the reasons given by the Commission for its decision in the notification of its decision given them, the Act provides they may appeal [264] therefrom within a specified time. Having failed to do so they cannot now complain on that score. (See Secs. 6 (c) and 6 (e) of the Act.)

There is no claim of fraud in this case, and hence the only questions for decision by this Court are whether the findings of fact made by the Commission are supported by evidence, and whether the conclusions thus reached are correct in law.

Before it passed upon the claims of the Claimants herein the Commission referred this matter

to a Referee who, after due notice to all interested parties, took voluminous and exhaustive testimony, which has been certified to this court and is now before us for examination.

From this record it appears that the Claimants (Petitioners herein) are all members of the Alaska Cannery Workers Union, Local No. 5 of San Francisco, a local union of the United Cannery Packing and Allied Workers of America, hereinafter designated as the "Union," said union being affiliated with the Maritime Federation of the Pacific. All the Claimants were employed during the 1939 canning season by the Alaska Packers Association at Chignik and Karluk (in central Alaska) and by the Red Salmon Canning Company, the Alaska Salmon Company, and the Alaska Packers Association in Bristol Bay. These concerns will hereinafter be designated as "the Employers." All of the Claimants reside in the San Francisco Bay region, and the Employers all operate salmon canneries in Alaska but have headquarters in, and operate out of, San Francisco.

Both parties appeared before the Referee and submitted evidence in support of their contentions. The Employers maintained that the unemployment of Claimants was due to a "labor dispute" which was "in active progress at the * * * premises at which he (the Claimants) is or was last employed." The Claimants took the opposite stand.

The Referee found the Alaska salmon fishing and canning industry to be a seasonal one, extending approximately from April into September of

each year; that the Commission had promulgated regulations wherein, for the purpose of the Act, the opening and closing days of the salmon season for various places in Alaska are fixed; at Karluk from April 5 to September 5; at Chignik from April 1 to Sept. 10; and at Bristol Bay from May 5 to Aug. 5 (Benefit Regulation No. 10).

From the inception of the industry in Alaska the salmon fleets carrying supplies, fishermen and cannery and other workers, have sailed [265] from San Francisco for the annual season to Karluk, Chignik and Bristol Bay. The Employers for many years past have operated under agreement with the Alaska Fishermens Union, and in more recent years have worked under agreement with other unions. The Employers and the Alaska Cannery Workers Union, Local No. 5, representing Claimants herein, entered into their first agreement with these employers in 1936, and continued to operate in each succeeding season under such agreements until and during the 1939 season. Their 1939 agreement provided that either party might terminate it at the close of the season, or before the following season, and that the parties would then proceed to negotiate a new agreement. The 1939 agreement was terminated in accordance with this provision in November of 1939, and negotiations for the 1940 season contract commenced in March, 1940. These negotiations continued at San Francisco until about April 1st, with propositions of settlement being made by first one and then the other

of the parties in interest. At these negotiations the Claimants were represented by officials of their union and the Employers by the Alaska Salmon Industry, Inc., a corporation organized for the purpose of handling labor problems and associated matters on behalf of its members, all of whom are salmon canners.

Being still unable to arrive at any agreement, the Union forwarded a letter to the Employers about the first of April, withdrawing its last proposed 1940 agreement, and stating that all further negotiations were being transferred to Seattle, where its representatives would meet, and did meet, with the Employers' agents. This move was welcomed by the Employers, who hoped to negotiate a coastwise agreement which would govern all Alaska operations and thereby put the San Francisco operators and employees on a parity with the Seattle and Portland operators and employees.

Thereafter, negotiations were resumed between the parties at Seattle. There negotiations with the San Francisco unions being about to fail, last minute attempts were made by both parties to come to an understanding, the Union proposing a renewal of their "1939 San Francisco agreement," while the Employers proposed the acceptance by the Union of the so-called "1939 Seattle agreement." Eventually a new agreement was negotiated at Seattle between the Seattle and Portland operators and unions, but this occurred later and did not include the San Francisco unions and operators. [266]

Near the end of the negotiations at Seattle, the time growing near when an agreement must be made in order to make it possible for the operators to make the necessary preparations for operating their canneries in those districts, the San Francisco Employers notified the Union (Claimants) that if no binding contract was concluded by April 10th, regarding Karluk; or by April 12 regarding Chignik; or by May 3rd regarding Bristol Bay, no operations could be undertaken at these plants during the 1940 season. No agreement was reached with reference to any of the plants referred to within the zero hour fixed by the Employers, with the result that none of the canneries were operated in any of the districts above specified during the 1940 season and the Claimants thus lost their employment for that season.

The Claimants contend that the decision of the Commission should be reversed, because:

1. Certain findings of facts made by the Commission are not supported by the evidence, viz:

The Commission found as a fact that "negotiations for a 1940 agreement were entered into between the parties (Employers and Union) and were in active progress at the opening of the canning season, as set forth in said Regulation No. 10."

2. The conclusions of law and decision are not supported by the findings of fact, viz:

The Commission concluded that "There was an 'active labor dispute' existing between the parties at the opening of the season.

3. The conclusions of law and decision are not supported by the evidence, viz:

The conclusion that there was a 'labor dispute' is not supported by the evidence.

4. The findings of fact made by the Commission compelled a decision contrary to the one rendered; and

5. The evidence and a proper consideration of the case requires findings of facts on matters which the Commission ignored.

All of these contentions involve, in their final analysis, the interpretation of Sec. 5 (d) (as amended) of our Unemployment Compensation Act; and the determination of the larger questions of (1) What is a "labor dispute," and (2) whether such labor dispute was "in active progress" [267] at the factory, establishment or other premises where he is or was last employed; and it is to these larger questions that we shall address our principal attention.

Unfortunately the words "labor dispute" on which this controversy hinges, are not defined in the Alaska Unemployment Compensation Act, and we must therefore endeavor to determine what the legislature meant when those words were used. The legislature being supposed to have used such words in their common and accepted meaning, it remains for us to determine what that meaning is.

"Dispute" is defined in Webster's New International Dictionary as: "To contend in argument; to argue something maintained by another; to de-

bate; often to argue irritably; wrangle; to make a subject of disputation; to argue pro and con; to debate; to oppose by argument or assertion; to attempt to overthrow; controvert; to call in question; to deny the truth or validity of."

In Federal legislation the term "labor dispute" has been defined in two acts of the Congress. In the Norris-LaGuardia Act (U.S.C.A. Title 29, sub-sec. c of Sec. 113) the term is defined as follows:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

In the National Labor Relations Act (U.S.C.A. Title 29, sub-sec. 9 of Sec. 152) the term is defined thus:

"The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

Our own unemployment compensation act was enacted in pursuance of the policy of social legislation enacted by the Congress of the United States, and, as is well known, is operated in conformity

with Federal legislation and, to some extent, under Federal restrictions. We are not bound by the definition of a labor dispute contained in the Federal statutes, but these definitions are at least persuasive of what [268] should be the definition of such a dispute, and are not out of line with the general and common acceptance of the meaning of the term; and, as said by Judge Fox in *Miners in General Group vs. Hix*, 17 S. E. 2d. (W. Va.) 810:

“Until a better definition is found, or there is some substantial reason for a finding that our legislature had in mind a different meaning to be attached thereto, there would seem to be no impropriety in our accepting these existing definitions (In *Norris-LaGuardia and Wagner Acts*) in the determination of what was then meant.”

The term “labor dispute” has also been defined by many of our courts of last resort, but we regard a review of these decisions as unnecessary, since they can be readily found in “*Words and Phrases*” (Perm. Ed.) under that title.

Very recent opinions of the courts of last resort in Ala., Ky. and Tenn. uniformly hold, under statutes similar in all material respects to our own, that:

Unemployment caused by the expiration of a contract of *of* employment, and by the inability of the parties to agree on the terms of a new contract, is “due to a labor dispute” within the meaning of their statutes; and persons so unemployed are ineligible for benefits.

Dept. of Ind. Rel. vs. Pesnell, 199 So. (Ala.)
720-724

Barnes vs. Hall, 146 S. W. 2nd (Ky.) 929

Block Coal & Coke Co. vs. United Mine Workers of A. 148 S. W. 2nd (Tenn.) 364.

There is, therefore, no question but what the negotiations between the parties, involving as they did, wages, hours and terms of employment, did constitute a "labor dispute" as that term is used in our statute.

We next turn to the determination of whether or not such labor dispute was "in active progress" at the factory, establishment or other premises at which he is or was last employed.

Concerning this The Commission found that "There was an active labor dispute existing between said parties at the opening of the season at all of the canneries in question, that said labor dispute continued," and that the Claimants were entitled to receive, if otherwise eligible, unemployment insurance as follows: "At Karluk Cannery eight (8) weeks after April 5; At Chignik Cannery eight (8) weeks after April 1; and at the Bristol Bay Cannery eight (8) weeks after May 5; said eight weeks disqualifying period being in addition to the two weeks regular waiting period, and if otherwise eligible."

It is admitted by the record that the dates of operation of the canneries in the districts involved in his controversy as fixed [269] by Regulation No. 10 are as follows:

At Chignik, from April 1st to September 10th:

At Karluk from April 5 to September 25, and

At Bristol Bay from May 5 to Aug. 25;

and that the negotiations were not called off as to Chignik until April 12, as to Karluk until April 10, and as to Bristol Bay until May 3d.

It thus appears by the record and the admissions of all the parties hereto, that such "labor dispute" was "in active progress" at Chignik until twelve days after the season began; at Karluk until April 10th—five days after the opening of the season there; and at Bristol Bay at least until May 3d, with the season officially opening there on May 5.

It also appears from the testimony taken before the Referee, (and is a fact so well known to both the Employers and Claimants, and to their representatives, and to the public generally, that the Court may well take judicial notice thereof), that even after an agreement has been reached, preliminary to the operation of such canneries, it is necessary for the Employers to purchase, pack, assemble and load onto their boats, food, medical and all other supplies for an entire season, and to transport such supplies and their working crews (the Claimants) from San Francisco to their canneries, a distance of from two to three thousand miles, and requiring ten to fifteen days to make the trip alone, without calculating the time nec-

essary for preparation for such trip and the time for unloading their crews and supplies at their destinations, putting their canneries into shape for operation and preparing generally for the season's work.

It should also be borne in mind that the work at these canneries is seasonal work of comparatively short duration, and that in order to operate said canneries it was necessary for the Employers to reach an agreement with the Claimants within a time sufficient to permit the necessary preparations for the season's work and such operations on a reasonable basis. This also was well known to both the Employers and the Claimants.

That there was a constantly recurring and open controversy between the Employers and the Claimants as to wages, etc. and that this "labor dispute" was the cause of the failure of the canneries to operate and the [270] consequent unemployment of the Claimants, is thoroughly established by the evidence taken before the Referee.

It is immaterial to this discussion and to the findings in this case as to who was responsible for the failure to agree upon a 1940 contract between the parties that caused Claimants' unemployment. The reason for the failure to operate the canneries and the consequent unemployment of the Claimants was because the parties could not agree upon the terms of a contract for the 1940 season. It is not important as to why they failed to agree or whose fault it was, or whether one party or the other was to blame. The only thing

of importance is the ultimate fact that they did not agree and that their failure to agree caused the unemployment of the Claimants, which is the basis of their claim.

Our statute makes no attempt to fix the responsibility for such stoppage of work, nor can we. The statute merely provides that no benefits may be paid thereunder where the "Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed."

Courts cannot legislate into statutes by interpretation, a meaning which the legislature itself was unwilling to sponsor or has purposely repudiated. Here the record shows that the reason for adding the proviso to Sec. 5(d) "provided that such disqualification shall not exceed the eight weeks immediately following the beginning of such dispute," was to give the beneficiaries of the statute eight weeks in which to settle their "labor dispute," and to deny them the benefits of unemployment compensation during such period. As was said by Justice Carter, in speaking for the Court in *Deshler Broom Factory vs. Kinney* (2 N. W. (2d) 332), in interpreting the Nebraska statute—which is substantially identical with our own:

"The unemployment compensation law does not purport to grant benefits to workmen who leave their work voluntarily; and neither does

it intend for an employee to benefit from the act while his bargaining agents are attempting to adjust their differences with the employer, since voluntary idleness under such conditions is not 'unemployment'."

It thus appears that there was an "active labor dispute" existing between the parties hereto at the opening of the season. That no agreement was made for the 1940 season, as a result of which the canneries in question did not operate and the Claimants were thereby [271] deprived of employment.

The Claimants also contend that the Alaska Salmon Company abandoned its 1940 Bristol Bay operations on April 30, 1940, and would not have operated during 1940, irrespective of whether there had or had not been an agreement with the Union. This contention was considered by the Referee and found without merit, and we concur in his finding.

They also contend that there was no Employer-Employee relationship existing between the parties at the beginning of the 1940 season. It is, however, agreed that such relationship had existed between the parties in the previous seasons, which would bring them within the provision of our statute denying compensation to "those whose total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed."

"An employer-employee relationship is not necessary for the imposition of the disquali-

fication, since the statute is broad enough to cover not only one presently in an employer-employee relationship, but also one who has last been in such relationship, although that relationship may have expired."

(Block Coal & Coke Co. vs. United Mine Workers of America; Tennessee Supreme Court, March 8, 1941.)

(Dept. of Industrial Relations vs. Pesnell, 199 S. p. 720-726.)

(Barnes et al. vs. Hall, 146 S. W. 2d (Ky.) 929.)

Other Courts of last resort have so construed similar statutes.

They further contend that an "active labor dispute" means a strike and picket line, an operation which is interrupted by such dispute, but such is not the law, and no authorities are cited in support of this proposition, although many authorities could be cited to the contrary.

It is also urged that unemployment laws are remedial in nature, and as such are to be liberally construed. With this we agree, but in this connection we call attention to the declaration of the Territorial public policy set forth in the preamble to the Act itself, in these words:

"Declaration of Territorial Public Policy.

As a guide to the interpretation and application of this act the public policy of this Territory is declared to be as follows:

Economic insecurity due to unemployment is

a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burdens which now so often fall with crushing force upon the employed worker and his family * * *. The Legislature therefore declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory require the enactment of this measure under the police power of the Territory for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed Through No Fault of Their Own."

[272]

The purpose of our Unemployment Compensation Act as thus expressed was "to provide economic security for the benefit of persons unemployed through no fault of their own And We think the statute should be construed in keeping with its declared policy, and while yielding to the view that the statute should be liberally construed, we think that it should be liberally construed in consonance with its expressed purpose.

Other minor questions are raised by the claimants in their petition for review, but most of them are fully answered in the discussion of the larger questions involved, and such as remain are not considered of sufficient importance to merit discussion.

The conclusions herein announced find support in:

Latham vs. State Unemployment Comp.
Comm. 117 P. 2d (Ore) 97,
Stearns Coal & Lumber Co. vs. U. S. Com. et
al. 3 C.C.H. (Ky.) 20511,
Barnes vs. Hall—146 SW 2d. (Ky.) 929,
Miners in General Group vs. Hix 17 SE 2d
(W. Va.) 810,
Dept. of Indus. Relations vs. Pesnell, 199 S.
(Ala.) 720,
Ex Parte Pesnell—199 S. (Ala.) 726,
Block Coal & Coke Co. vs. United Mine
Workers, 148 SW 2d (Tenn.) 364,
Deshler Broom Factory vs. Kinney 2 NW 2d.
(Neb.) 332.

A review of these cases might be interesting, but this opinion has already reached unexpected length. We therefore only add that we are aware of no courts of last resort (nor have any such cases been cited) which have reached a conclusion at variance with the views herein expressed, and our information and research both indicate that a large majority of the State Commissions have reached the same conclusions with respect to similar unemployment for which compensation was sought under statutes similar, or differing only slightly, from our own.

The Finding of the Unemployment Commission are therefore affirmed.

Findings and Judgment may be prepared in accordance herewith.

Dated at Juneau, Alaska, April 30, 1942.

GEO. F. ALEXANDER

Judge.

[Endorsed]: Filed May 2, 1942. [273]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This matter came before the court on a petition of the petitioners above named, for review of a decision of the Unemployment Compensation Commission of the Territory of Alaska and the answer of the above named respondents, to-wit: The Unemployment Compensation Commission of Alaska, the members thereof, the Alaska Packers Association, Alaska Salmon Company and the Red Salmon Canning Company, corporations; and the matter having been by stipulation of all the parties hereto, submitted on briefs of petitioners and respondents, and the court having examined the whole record and considered the briefs and the law of the Territory of Alaska, and being fully advised in the premises; and having made and filed herein on May 2d, 1942, its written opinion, and it appearing that the claims of petitioners were first considered by an Examiner of the Commission, as prescribed by law, and denied, for eight weeks after the two-week waiting period following the opening of the season, as defined by the regulations of the Unemployment

Compensation Commission, at the canneries in question hereinafter named. That thereafter a Referee, to-wit: Henry Roden, was appointed to take testimony and report his findings and conclusions to the Commission, and the Referee denied the claims in part and upheld them in part. The matter was then considered by the Commission itself, which overruled the decision of the Referee in part and sustained it in part; and from the ruling and decision of the Commission, petitioners have sought a review of the decision of the Unemployment Compensation Commission in the above entitled court. That the court has jurisdiction over the parties and the subject matter, and now makes the following— [274]

FINDINGS OF FACT

1. That petitioners are members of Alaska Cannery Workers Union Local No. 5, an unincorporated association and labor union with collective bargaining powers, and the Union acted throughout all the proceedings herein on behalf of itself and all its members.

2. That the respondents, Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, are corporations with headquarters in San Francisco, operating canneries in several points in Alaska, to-wit: Chignik, Karluk and various places in Bristol Bay, and the petitioners are and were in 1939, employees of these companies in their fishing and canning operations in Alaska. That the respondent companies are engaged in catch-

ing, canning and marketing salmon in the waters of Alaska and at the places hereinabove mentioned and mentioned in the proceedings, and that this work is seasonal in nature and the time of each year during which fishing can be carried on is prescribed by regulations of the Department of the Interior pursuant to the laws of Congress, the actual fishing season being prescribed by law and regulation, and the entire operations, including the fishing season, covering only a few months of each year. That the fishing and canning season, including the period of preparation therefor, for the purposes of the unemployment compensation law of the Territory, at various points in Alaska, is under the law fixed by regulations of the Commission, and that these regulations prescribe the opening and closing days of the salmon season at Karluk, Alaska, to be from April 5th to September 5th; at Chignik from April 1st to September 10th; and at Bristol Bay from May 5th to August 5th, and that the employees, including petitioners, are sent from San Francisco, together with supplies, each year, and returned to San Francisco at the end of the season, and the respondent companies, the employers, for many years past operated each and every season under an agreement with the Alaska Fishermen's Union, and in more recent years and including the seasons from 1936 to 1939, inclusive, with the Alaska Cannery Workers Union Local No. 5, which represents the claimants herein.

3. That before the employees sailed from San Francisco each year for the canneries in Alaska and

the fishing grounds, they made a working agreement through the unions with the companies, covering wages, hours, working conditions and all other matters incident to the employment and usually covered by such working agreements. [275]

4. That the last working agreement actually entered into between the companies and the petitioners and employees and the Union acting for them, covered the season 1939, and it was terminated in November 1939 and no agreement was ever made for the season of 1940 for any of the companies at any of their canneries in Alaska, and no canneries operated during the 1940 season.

5. That negotiations were entered into before the dates of the opening of the season, as prescribed by the regulations of the Alaska Unemployment Compensation Commission, and there was a disagreement between petitioners and the Union and its members and the respondent companies. Demands were made by the Union and its members and by the claimants and petitioners; offers were made by the companies, the respondents, and counterdemands were made, all covering the respective canneries. These demands, offers and counterdemands were all with reference to the terms and conditions of employment, and especially with reference to the wage scales for the 1940 season, and there was a labor dispute between petitioners and claimants, the Union and its members, on the one side, and the respondent companies on the other side, and this labor dispute continued and was never settled but remained in progress as hereinafter set forth.

6. That in order to operate salmon canneries in Alaska, it is necessary for the operators, the companies, to make preparations sometime in advance to sign on its employees, prepare its ships, purchase and load supplies and sail to the canneries in Alaska in time to make all preparations there and be on the ground when the fishing season opens, as prescribed by law.

7. That after the labor dispute as hereinabove mentioned had continued for some time and no prospect of settlement was in sight, the employers notified the claimants, petitioners and the Union, that if no contract were concluded before April 10 for the Karluk operations, before April 12th for the Chignik operations and before May 3rd for the Bristol Bay operations, it would be impossible to operate and no operations could be undertaken at the canning plants at Chignik, Karluk and Bristol Bay, and the court finds that from the nature of these operations and the requisite nature of the preparations required, no such operations could be undertaken unless agreements were reached before those dates.

8. That no agreement was reached within the time set by the employ- [276] ment for the respective plants, and no agreement was reached within time for the opening of the fishing and canning season as prescribed by the regulations of the Department of Interior and as defined by the regulations of the Unemployment Compensation Commission of Alaska, and no operations could be carried on dur-

ing the 1940 season by the respondent companies at their canneries at Chignik, Karluk and various points in Bristol Bay.

9. That the labor dispute which was in progress long before the opening dates for fishing and canning as hereinabove set forth, existed and was in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season as defined by the Commission.

10. That the unemployment of claimants in the 1940 fishing and canning season, and the whole thereof, was due to a labor dispute existing between the employers, the respondent companies herein, and the claimants, and that this labor dispute was in active progress at the cannery at which they were respectively last employed, and there was an active labor dispute between the claimants and the respondent employers during the entire canning season as defined by the Commission at the respective canning plants at Chignik, Karluk and various points in Bristol Bay, Alaska.

11. That the conclusions of law and the decisions of the Alaska Unemployment Compensation Commission were amply supported by the findings and by the evidence, and the decision was proper and in accordance with the findings and evidence, and the findings were sufficient to sustain the decision of the Commission and no other findings were necessary to a determination of the question involved, and such findings and decision were made according to law.

12. That the evidence does not support the con-

tention of claimants that the Alaska Salmon Company, one of the respondents, would not have operated in 1940 regardless of the outcome of the labor dispute and regardless of whether or not there had been or had not been an agreement made with claimants.

13. That petitioners made no objections to the findings of the Commission and did not appeal to the Commission from its decision within the time and in the manner required by law, and that there was complete absence of fraud, and, therefore, the findings of the Commission are conclusive. [277]

Based on the foregoing Findings, the court makes the following:

CONCLUSIONS OF LAW

1. The Claimants were not unemployed "through no fault of their own," but were unemployed because they were unwilling to accept employment offered them. The claimants were unemployed due to a labor dispute which was during the entire fishing and canning season of 1940 as defined by the Commission in active progress at the factory, establishment or other premises at which they were last employed.

2. That an active labor dispute does not mean, under the statute, picket lines and strikes and interruption of work already begun, but may consist of a controversy without the existence of a strike. That while the Alaska Unemployment Compensation laws is of a remedial nature and to be liberally construed, it must be construed in keeping with the

declared purpose of the law, which is found in Chapter 4, Session Laws of Alaska, Extraordinary Session, 1937.

3. That the findings and decision of the Alaska Unemployment Compensation Commission, of which petitioners sought a review, are affirmed; and none of the claimants are entitled to the benefits claimed.

Judgment and Decree may be entered accordingly.

Done in open court this 8th day of August, 1942.

GEO. F. ALEXANDER

Judge.

[Endorsed]: Filed August 8, 1942. [278]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

State of California,

City and County of San Francisco—ss.

Albert J. Brown, being first duly sworn, deposes and says: That he is, and at all of the times herein mentioned was, a resident of the State of California, over the age of eighteen years, and competent to be a witness in the above entitled matter; that on the 10th day of July, 1942, he served a copy of the findings of fact and conclusions of law in the above entitled matter upon the law firm of Messrs. Andersen & Resner, attorneys for the above named petitioners, by delivering to Herbert Resner, Esq., personally at his office at 544 Market Street, San

Francisco, California, a copy of said findings of fact and conclusions of law.

ALBERT J. BROWN

Subscribed and sworn to before me this 11th day of July, 1942.

(Seal) FRANK C. OWEN

Notary Public in and for the City and County of San Francisco, State of California. [279]

In the District Court for the Territory of Alaska,
Division Number One, at Juneau

No. 4620-A

FRANK L. ARAGON, and other Applicants,
Members of Alaska Cannery Workers Union
Local No. 5, and Alaska Cannery Workers
Union Local No. 5, on behalf of Applicants,
Petitioners,

vs.

UNEMPLOYMENT COMPENSATION COM-
MISSION OF THE TERRITORY OF
ALASKA; NOBLE DICK, R. E. HARD-
CASTLE and R. S. BRAGAW, as members of
and constituting said Commission, and ALAS-
KA PACKERS ASSOCIATION, a corpora-
tion; ALASKA SALMON COMPANY, a cor-
poration; and RED SALMON CANNING
COMPANY, a corporation,

Defendants and Respondents.

DECREE

This matter having come on before the court to

be heard upon the petition of claimants herein-above named, for a review of the decision of the Unemployment Compensation Commission of the Territory of Alaska, pursuant to the provisions of the Unemployment Compensation Act, Chapter 4, Session Laws of Alaska, Extraordinary Session 1937, as amended by Chapters 1 and 51, Session Laws of Alaska 1939, and the answer of respondents and defendants above named, and the matter having been by stipulation submitted on the briefs of the parties, and the court having examined the record and the briefs and the applicable law, and having rendered a written opinion on the 2nd day of May, 1942, and having made and filed herein its Findings of Fact and Conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed that the findings and decision of the Alaska Unemployment Compensation Commission sought to be reviewed are hereby affirmed and approved, and claims of petitioners to benefits claimed by them under the provisions of the Alaska Unemployment Compensation law are hereby denied.

Done in Open Court this 8th day of August, 1942.

GEO. F. ALEXANDER,
Judge.

[Endorsed]: Filed August 8, 1942. [280]

[Title of District Court and Cause.]

PETITION FOR LEAVE TO APPEAL TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.

Come now Frank L. Aragon and other individual applicants in the above entitled action, and the Alaska Cannery Workers Union, Local No. 5, on behalf of said Applicants, being petitioners and appellants in the above entitled action, and conceiving and believing themselves to be aggrieved by the judgment made and entered against them on August 8, 1942, do hereby petition the above entitled Court for leave to appeal from said judgment and the whole thereof to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby file their assignment of errors asserted and relied upon by them upon said appeal; that an order be entered herein allowing said applicants and appellants to prosecute this appeal without the necessity of filing any cost and/or any supersedeas bond on appeal as provided by the Alaska Unemployment Compensation Law (Statutes of Alaska, Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws 1939, Section 6 (i); and that a citation may issue and be directed to respondents and each of them citing them to appear in the said United States Circuit Court of Appeals for the Ninth Circuit 40 days from the date of said citation; and that an order be made directing the Clerk of the above entitled Court to prepare the transcript of the record, proceedings and papers, and all of them, upon which

said judgment was made and entered, and duly authenticate the same and send the same [281] to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated at San Francisco, California, October 26, 1942.

ANDERSEN & RESNER,
GEORGE R. ANDERSEN,
HERBERT RESNER.

Copy received November 4, 1942.

H. L. FAULKNER,
Attorney for Alaska Packers
Assn., Alaska Salmon Co.
and Red Salmon Canning
Company.

GROVER C. WINN,
Attorney for Alaska Unem-
ployment Comp. Commis-
sion.

[Endorsed]: Filed November 4, 1942. [282]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Come now Frank L. Aragon and other individual applicants in the above entitled action, and the Alaska Cannery Workers Union, Local No. 5, on behalf of said Applicants, being petitioners and appellants in the above entitled action, and complaint of the judgment rendered and entered herein by the District Court for the Territory of Alaska, Division No. 1, at Juneau, on August 8, 1942, and

of the whole thereof, and aver that in the proceedings in said cause manifest error has occurred to the prejudice of these applicants and appellants and each of them of which they make the following:

ASSIGNMENTS OF ERROR

which they assert and intend to rely upon in the United States Circuit Court of Appeals for the Ninth Circuit upon their appeal to said Court.

I.

That Finding of Fact No. 5 made by the District Court is not supported by the evidence adduced before the Referee and the Commission in that no labor dispute, within the meaning in the Alaska Unemployment Compensation Law, existed between petitioners and claimants, the Commission and its members, on the one side, and the respondent companies on the other side; and that said alleged labor dispute did not continue and did not remain in active progress as stated by said finding. [283]

II.

That Finding of Fact No. 6 made by the District Court is irrelevant and immaterial in that it makes no difference whatsoever to this proceeding when respondent companies find it necessary to make preparation for the Alaska Salmon Packing season, but the only issue in this case is whether applicants and petitioners are entitled to benefits within the purview of the Alaska Unemployment Compensation Law in view of the evidence adduced before the Referee and The Commission.

III.

That Finding of Fact No. 7 made by the District Court is not supported by the evidence in that said finding assumes that a labor dispute existed and continued whereas the fact is that no labor dispute existed or continued or was in active progress during the said 1940 Alaska Salmon packing season within the meaning of the Alaska Unemployment Compensation Law. Applicants and appellants take no exception to said finding insofar as it sets forth the dates given by respondent canneries as their deadlines for the execution of collective bargaining agreements. That insofar as said finding No. 7 finds that canning operations could not be undertaken unless agreements were reached before the dates set forth in said finding, said finding is improper in that said matter is immaterial and irrelevant to the rights of applicants and appellants to have unemployment benefits.

IV.

That with respect to Finding No. 8 made by the said District Court the only part of said finding that is proper is as follows: "That no agreement was reached." The balance of said finding is immaterial and irrelevant and is not a proper finding and has no relation whatsoever to the issue involved in this case, namely, the right of applicants and appellants to be awarded unemployment benefits for the 1940 season.

V.

That finding No. 9 made by the District Court is

not supported by the evidence in the following respects:

(1) No labor dispute existed within the meaning of the Alaska Unemployment Compensation Law.

(2) Admitting for the sake of argument that a labor dispute existed at one time, it did not exist and was not in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire [284] season as defined by the Commission, but said labor dispute was in active progress at Chignik only from April 1, 1940, to April 12, 1940, and terminated on April 12, 1940, and was not in active progress at Chignik during the balance of the 1940 season; that said labor dispute was in active progress at Karluk only from April 5, 1940, to April 10, 1940, and terminated on April 10, 1942, and was not in active progress at Karluk during the balance of the 1940 season; that at the commencement of the season at Bristol Bay no labor dispute was in active progress, and no labor dispute existed with respect to the Bristol Bay operations at any time during the 1940 season.

VI.

That Finding of Fact No. 10 made by the District Court is not supported by the evidence adduced before the Referee and the Commission in that the unemployment of applicants and appellants during the 1940 season was not due to a labor dispute existing between applicants and appellants on the one hand and respondent companies on the other; and admitting for the sake of argument that a labor

dispute existed at one time, said labor dispute was not in active progress during the said 1940 season in the plants where applicants were respectively last employed, but said labor dispute, if any, terminated at Chignik on April 12, 1940 and terminated at Karluk on April 10, 1940, and was not in existence at all at Bristol Bay during the 1940 Bristol Bay season.

VII.

That Finding of Fact No. 11 made by the District Court is not supported by the evidence adduced before the Referee and the Commission, but on the contrary the conclusions of law and the decision of the Alaska Unemployment Compensation Commission were not supported by the findings and the evidence and the said decision was not proper and was not in accord with the evidence, and the said findings of the Commission were not sufficient, but on the contrary the Commission should have made findings of fact on matters which the Commission ignored, and which were necessary to a proper determination of the case, as follows:

1. What facts are necessary to show a "labor dispute" within the meaning of the Act? Must there be a strike, walk-out, presently existing employer-employee relationship terminated by dispute, picket line, a job to strike? What bearing does the absence of these factors have in the instant case? [285]

2. Is petitioners' unemployment "due" to a labor dispute, or is it "due" to the curtailment in Alaska Packers' Bristol Bay operations, and the failure of Alaska Salmon to operate for reasons unconnected with labor, and finally is not the unemploy-

ment of petitioners "due" to the seasonal nature of their work and the fact that they were never re-employed in 1940, rather than an alleged labor dispute?

3. If there was a dispute, how long did it remain in "Active" progress? Did not the dispute terminate when the employers abandoned their operations, for Karluk on April 10, 1940; Chignik on April 12, 1940; and Bristol Bay on May 3, 1940: Was not the Referee correct in so finding, and was not the Commission in error in not considering this fundamental finding, and indicating where it was wrong, if it was wrong?

4. In what way do negotiations which do not result in a contract constitute a labor dispute within the meaning of the Act?

VIII.

That Finding of Fact No. 12 made by the District Court is not supported by the evidence and the evidence shows, contrary to said finding, that the Alaska Salmon Company would not have conducted its 1940 Salmon packing operations regardless of whether a collective bargaining agreement had been entered into with the applicant union and its members or not.

IX.

That Finding of Fact No. 13 made by the District Court is not supported by the evidence; that petitioners did make objections to the findings of the Commission according to the provisions of the Alaska Unemployment Compensation Law by appealing the decision of said Commission to the above entitled Court and filing in this Court their petition for re-

view of said decision on January 8, 1941. That what this finding probably intended to state was that petitioners made no objections to and took no appeal from the findings of the Referee who heard the matter originally, and while it is true that petitioners did not appeal from the decision and findings of the Referee, that when respondent companies took an appeal to the Commission, the entire matter before the Referee was reopened before the Commission, and everything which applicants and appellants presented to the Commission on the respondents' appeal was therefore proper and according to law. The findings of the Commission are not conclusive upon appli- [286] cants and appellants because said findings are contrary to and not supported by the evidence and such a decision is appealable and the evidence may be reviewed to determine if it supports the findings, as provided by Section 6 (i) of the Alaska Unemployment Compensation Law.

X.

That Conclusion of Law No. 1 made by the District Court is in error and contrary to law in that applicants and petitioners were not unemployed because they were unwilling to accept employment offered them or because of a labor dispute which was in active progress during the entire 1940 Alaska salmon packing season but, on the contrary, said applicants and appellants were unemployed during the said 1940 season because respondent companies failed and refused to employ applicants and failed and refused to enter into a collective bargaining agreement

with the Union of which applicants were and are members. That said Conclusion of Law is contrary to and not supported by the evidence in that the evidence shows that if a labor dispute existed, it terminated at Chignik on April 12, 1940, at Karluk on April 10, 1940 and was not in existence at all at Bristol Bay during the said 1940 season, and therefore applicants and appellants were entitled to benefits accordingly.

XI.

That Conclusion of Law No. 2 made by the District Court is not proper and is contrary to law in that the definition therein stated of what constitutes an active labor dispute within the meaning of the Alaska Unemployment Compensation Law is wrong, but that an active labor dispute within the meaning of said law means an actual dispute between employer and employee whereby the relationship of employer and employee is terminated and employees remain away from work because of a dispute with their employer over wages, hours or other conditions or incidents to employment. That the declared purpose of the law requires that benefits be paid rather than denied in this case.

XII.

That Conclusion of Law No. 3 made by the District Court is improper and contrary to law in that the findings and decision of the Alaska Unemployment Commission are improper, not supported by the evidence, contrary to the evidence and contrary to law and thereby said [287] findings and decision should have been set aside and reversed. That claimants

are entitled to benefits for their unemployment during the entire 1940 season and should have been paid said benefits. That specifically applicants and appellants urge the following assignments of error in connection with the findings and decision of the Commission:

1. CERTAIN FINDINGS OF FACT MADE BY THE COMMISSION ARE NOT SUPPORTED BY THE EVIDENCE.

A. The Commission found as a fact that "negotiations for (a 1940) agreement were entered into between said parties (employers and Union) and were in active progress at the opening of the canning season as set forth in said Regulation No. 10." (Our underlining.)

Exception to said finding:

(1) Regulation No. 10 provides that the Bristol Bay season was to open on May 5, 1940. The evidence offered by the employers themselves (and petitioners do not dispute it) shows that the negotiations for the Bristol Bay operations terminated at midnight May 3, 1940, and that the employers abandoned the season at that time which they had fixed as their "deadline" to reach a 1940 agreement with the Union. (See Employers' Exhibit "X" Applicants' Exhibit "19", Tr. p. 226, 228, 232, testimony of J. Paul St. Sure. See also decision of Special Referee Henry Roden, p. 2, and p. 10, finding that negotiations for Bristol Bay terminated at mid-

night May 3, 1940, and that the employers abandoned the Bristol Bay season at that time.)

It follows without answer that the Commission's finding of fact that negotiations were in active progress at the opening of the season as fixed by Regulation No. 10 is in error and not supported by the evidence insofar as the Bristol Bay operations are concerned.

(2) In addition, the Alaska Salmon Company abandoned its entire 1940 operations on April 30, 1940, five days before the season at Bristol Bay opened. (See Applicants' Exhibit "2".) This company operates only at Bristol Bay. (Tr. p. 304, testimony of Mr. Peterson.) It follows that the applicants employed in 1939 by Alaska Salmon Company are unquestionably entitled to benefits, and the Commission's finding is in error insofar as [288] the Commission finds that Alaska Salmon Company was carrying on active negotiations at the time of the opening of the Bristol Bay season as fixed by Regulation No. 10.

We conclude that there were no negotiations for Bristol Bay after May 3, 1940 and that all applicants employed at Bristol Bay in 1939 are without question entitled to benefits for the full season and are subject to no labor dispute disqualification. This includes all the 1939 employees (members of the Union) of Alaska Salmon Company and Red Salmon Canning Company, who operate only at Bristol Bay; and those employees of Alaska Packers who were employed at Bristol Bay in 1939.

b. The Commission found as a fact that the em-

ployers notified the applicants "of the necessity of entering into a new working agreement for the canning season of 1940." (Our underlining.)

Exception to said finding:

(1) Insofar as this finding means that a new agreement was to be reached between the parties for the 1940 season if there was to be operation by the San Francisco operators, the finding is proper and supported by the evidence. But insofar as it leaves the inference that the operators were ready to sign an agreement but the Union was not, the finding is not supported by the evidence. The operators wanted to sign a 1940 agreement on terms less favorable to the Union than the Union enjoyed in 1939. The onus cannot be placed on the Union for failing to arrive at an agreement. The blame, if it belong anywhere, rests with the employers who without justification or reason wanted the Union to accept less favorable terms and conditions than the workers enjoyed in 1939, while the Union wanted at least a renewal of the 1939 agreement. The applicants were at all times ready, willing and able to work on 1939 wages and terms. (See Tr. P. 333, p. 335-336.) The use of the word "necessity is therefore not supported by the evidence insofar as the inference is left that the employers were not at fault in the failure of the parties to reach an agreement for the 1940 season.

(2) Alaska Salmon Company abandoned its 1940 operation on April 30, 1940 (Applicants' Exhibit "2"), and would not have operated during

1940 irrespective of whether there had been or had not been an agreement with the union. (See Tr. p. 320, stipulation by Mr. Oliver, [289] counsel for Alaska Salmon, to that effect.)

It follows that the operators and particularly Alaska Salmon Company did not find it "necessary" to reach an agreement for the 1940 season.

2. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE FINDINGS OF FACT.

a. The Commission concluded that "there was an active labor dispute existing between the parties at the opening of the season."

This conclusion must be separated into its two parts: First, that that was a "labor dispute", and second, that there was an "active" labor dispute at the opening of the season.

The Commission's "findings of fact" can be briefly summarized as follows:

1. That all applicants were employees of the employers during the 1939 seasonal canning industry as provided in Regulation No. 10.

2. That the employers cancelled the 1939 agreement with the Union.

3. That the employers notified the Union of the "necessity" of entering into a new agreement for the 1940 canning season.

4. That the Union admitted receipt of the Notice of the cancellation of the 1939 agreement.

5. That thereafter, negotiations for the 1940 season occurred.

6. That the salmon cannery industry is seasonal.
7. That dates for which unemployment benefits could be allowed were provided by Regulation No. 10.
8. That employers and applicants were aware of this condition.
9. That the dates of operation of the canneries in the districts involved in this controversy as fixed by Regulation No. 10 are as follows:
Karluk: April 5-September 25;
Chignik: April 1-September 10;
Bristol Bay: May 5-August 25.
10. That following the notice of cancellation of the 1939 agreement by employers, negotiations for a 1940 agreement between the parties commence.
11. That the negotiations were in active progress at the opening of the season as set forth in Regulation No. 10. [290]
12. That no agreement was ever entered into between the parties prior to the opening of the season, or thereafter.
13. Quoting from the Declaration of Territorial Public Policy of the Act that benefits were to be paid to persons unemployed through no fault of their own.

(1) Petitioners submit that these findings do not support a conclusion that a "labor dispute" existed between the parties. All that can be concluded from the Commission's findings is that the parties negotiated for, but did not arrive at a 1940 agreement. We submit, that is not a "labor dispute" within the meaning of the Act. There are

no findings to support a conclusion that a "labor dispute" existed.

(2) Petitioners submit that these findings do not support the conclusion that there was an "active labor dispute existing between the parties at the opening of the season". (Our underlining.) The Commission has failed to separate the various areas of operation with regard to the opening of the season. For the sake of argument (but not admitting it) let us say a "labor dispute" occurred between the parties. The employers abandoned the Chignik operation on April 12, 1940; the Karluk operation on April 10, 1940; and the Bristol Bay operation on May 3, 1940. After those dates, the employers and the Union did nothing with regard to the 1940 season for the respective areas. The parties dropped the matter, the employers called off the season, and in the words of Referee Roden, the parties treated the matter as a "dead horse". (See decision of Referee Roden p. 2, pp. 17-18; Employers' Exhibits "U" and "X"; Applicants' Exhibits "2" and "19".)

Bear in mind that the seasons opened as follows:

Karluk, April 5th;
Chignik, April 1st;
Bristol Bay, May 5th.

While it may be argued that the "labor dispute" was in active progress with respect to Chignik and Karluk by reference to the above dates at the opening of the season in those areas, the same thing can-

not be said for Bristol Bay. There the "dispute" terminated, the negotiations ended, and the season was abandoned on May 3, 1940 two days before the season opened. We submit that there was no "active labor dispute" at Bristol Bay at the "opening of the season" there. [291]

Therefore, the conclusion that "an active labor dispute existed between the parties at the opening of the season" is not supported by the findings of fact.

b. The Commission concluded that "the dispute continued". (Our underlining.)

That conclusion is not supported by the findings. There are no findings that the dispute (if there was one) continued to any particular day with reference to any of the three areas in question. Nor is there any conclusion regarding the day to which the "dispute" continued. For all that appears from the decision, the dispute still continues and will continue to continue, and there is no indication as to when it will end if ever. As a matter of fact, the dispute, if there was one, ended with regard to Karluk on April 10, 1940; at Chignik on April 12, 1940; and at Bristol Bay on May 3, 1940; all as noted above.

c. The decision reversing the Referee, and disqualifying petitioners for eight weeks each is in error, because as indicated above there are no findings to support a conclusion that a labor dispute existed, or that if there was a dispute, that it continued beyond the dates mentioned for the respec-

tive areas; and the decision is in error in disregarding the uncontradicted evidence that the negotiations for Bristol Bay ended, and the season for that area was abandoned, on May 3, 1940, two days before the season was to open.

3. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE EVIDENCE.

a. The conclusion that there was a "labor dispute" is not supported by the evidence.

The uncontradicted evidence shows that the Union did not declare a strike, and did not picket the employers, and did not strike or picket because there was no operation to strike or picket; that there was no employer-employee relationship existing between the parties at the beginning of the 1940 season; that the last time the petitioners were employees of the employers or on their payroll was at the conclusion of the 1939 season, and when that season ended, the employee-employer relationship between the parties ended.

The evidence further shows that the employers wanted the Union to accept a reduction of the 1939 San Francisco contracts, and only [292] offered the Union either the 1939 or 1940 Seattle agreement, whichever was most favorable to the Union. That the employers never retreated from this stand. That the Union proffered a 1940 contract which was more advantageous to it than the 1939 San Francisco contract. That this was rejected by the employers, and the Union finally offered to re-execute the 1939

San Francisco contract, which the employers refused. That the Employers abandoned their respective operations as their stated "deadlines" occurred; Karluk, April 10, 1940; Chignik, April 12, 1940; Bristol Bay, May 3, 1940. That thereupon the matter was dropped by both parties, and nothing further was done between them with regard to the 1940 season. There were meetings between the parties for negotiation purposes. The evidence shows that the negotiations were carried on in a friendly manner. The petitioners were ready, able and willing to work in 1940 on the same wages and conditions that they enjoyed out of San Francisco in 1939. That Alaska Salmon Company would not have operated in 1940 even if an agreement had been reached with the Union. That the Alaska Packers were going to curtail their operations and employment at Bristol Bay one-third on account of the Government ordered curtailment in fishing.

We submit that these facts do not show a "labor dispute" within the meaning of the Act.

b. The Conclusion that there was an "active" labor dispute is not supported by the evidence.

It has been fully stated hereinabove (and reasons and citations given) that if there was a dispute, it was not in active progress at Karluk after April 10, 1940; nor at Chignik after April 12, 1940; nor at Bristol Bay after May 3, 1940. So Referee Roden found, and the evidence and reason support that finding (Decision of Referee, pp. 17-18) and the Commission does not examine nor dispute this finding. The Commission merely lays down an unsup-

ported conclusion and fiat that a dispute was in "active" progress.

The Act provides that a labor dispute, to disqualify an applicant, must be in active progress with respect to "any week" for which the applicant is disqualified. In other words, if there is a dispute in existence for one week, that disqualifies the applicant only for that one week, but not thereafter. Therefore, if there was a dispute, it [293] ended at Karluk on April 10, 1940, and at Chignik on April 12, 1940, and applicants last employed in 1939 in plants at those areas are not disqualified after those dates that the dispute was not in "active" progress.

With regard to Bristol Bay, the dispute ended on May 3, 1940 two days before the season opened. Petitioners would not be entitled to benefits until the season opened on May 5, and at that time there was no dispute in active progress. The dispute was then a thing of the past. Therefore, there is no disqualification with regard to the employees who were last employed in 1939 in Bristol Bay.

Furthermore, an "active" labor dispute, means a strike and picket line, an operation which is interrupted by such dispute. It is admitted that there was neither strike nor picket line here, nor could there be, because the workers never started to work in 1940; there was no job to strike; no employer-employee relationship to terminate. Therefore, there was no labor dispute in "active" progress. A dispute in active progress would mean that there would be a way to end it, and therefore if the workers started it (thereby disqualifying themselves)

they could end it (thereby removing the disqualification). But here, the employers abandoned the season on their "deadline" dates, and that was all there was to the 1940 season so far as these petitioners are concerned.

c. The conclusion that the dispute "continued" is contrary to the evidence.

It has already been adequately set out herein that the dispute (if there was one) ended on the dates the employers abandoned their respective operations, and that the dispute became a dead letter on those dates. The Commission's conclusion that the dispute "continued" could mean that the dispute continued indefinitely and in fact still continues. That conclusion, or any conclusion that the dispute continued after the dates set out hereinabove, is contrary to the evidence.

d. The decision is in error in that there is neither finding nor conclusion that petitioners' unemployment during the 1940 salmon canning season was "due" to a labor dispute in active progress at the premises where last employed (which means at the conclusion of the 1939 season), and not "due" to other causes.

The Commission merely found a "labor dispute" and disqualified applicants. The Commission does not consider whether applicants were unemployed at Alaska Packers because of the curtailment. It is admitted that this company, if it operated during 1940, was going to hire one-third fewer workers than in 1939, at least at Bristol Bay operations. (Tr. p. 270, testimony of Mr. Tichenor.)

It is admitted that Alaska Salmon Company would not have operated in 1940 even had an agreement with the Union been signed. (Tr. p. 326). Therefore, it would follow that the employees of Alaska Packers [294] (at Bristol Bay) and Alaska Salmon would not be disqualified in any event because their unemployment would not be "due" to a labor dispute insofar as it would be difficult to determine which one-third of the employees last employed by Alaska Packers at Bristol would be unemployed during 1940 because of the curtailment, the doubt must be resolved in favor of the applicants, because the Act is remedial in nature and therefore must be liberally construed so as to pay, and not to deny benefits, and therefore all applicants so employed in 1939 should not be subject to any "labor dispute" disqualification.

Finally, petitioners' unemployment is "due" to the seasonal lay-off; that is petitioners became unemployed when the 1939 season ended, and never became reemployed for 1940. Therefore, their unemployment is due to the seasonal nature of their work, and not to any alleged labor dispute.

4. THE FINDINGS OF FACT MADE BY THE COMMISSION COMPEL A DECISION CONTRARY TO THE ONE RENDERED.

The findings show that the employers cancelled the 1939 contract, and that negotiations occurred between the parties, but that the parties did not arrive at a 1940 agreement. Therefore, it appears that had not the employers cancelled the 1939 con-

tract, operations would have taken place during 1940 on the basis of the 1939 contract which would have continued in existence. Therefore, the onus falls on the employers because it was their affirmative action which started the "dispute" and petitioners are unemployed not through their own fault but because of the employers' actions in attempting to undercut 1939 wages and conditions.

Nor do the findings of fact establish any labor dispute. They only show negotiations which were not consummated by agreement. They show no strike, no walk-out, no picket line, no presently existing employer-employee relationship terminated, in fact, no job to strike. It follows that the findings made, and the absence of other findings necessary to show a labor dispute, compel a decision that there was no labor dispute.

5. THE DECISION IS CONTRARY TO LAW.

1. The decision is wrong in holding that the facts in this case constitute a "labor dispute" within the meaning of the Act. [295]

2. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act when the season opened, and that the dispute "continued".

3. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act after April 10, 1940 at Karluk, April 12, 1940 at Chignik, and after May 3, 1940 at Bristol Bay.

4. The decision is wrong in holding that petitioners' unemployment is "due" to a labor dispute.

The Commission has decided that where an employer cancels a collective bargaining agreement with a union and in its stead seeks to establish a contract giving lower wages and poor conditions to the workers and the workers refuse to accept the same, as a result of which the employers abandon operations in a seasonal industry, work for the new season never having started, that this constitutes a "labor dispute in active progress" for the entire season of said seasonal industry within the meaning of the Act, and disqualifies the workers for benefits for a period of eight weeks as provided by the Act.

In petitioners' opinion, this is a plain misinterpretation of the Act, is contrary to the better reasoned decisions on the subject of what constitutes a "labor dispute in active progress" within the meaning of the unemployment insurance laws, and violates the spirit and purpose of the Act. The facts in this case do not constitute a "labor dispute" within the meaning of the Act as a matter of law.

If the Commission's decision is allowed to stand it is an invitation to employers to cut wages (even though no basis exists or is offered) and if workers refuse to accept the cuts, then they also shall be denied unemployment benefits. The Act would thus operate to hurt rather than help workers as it its declared purpose.

Unemployment Laws are remedial in nature. They are to be liberally construed, and every intendment is in favor of paying benefits rather than denying them. All doubts must be resolved in favor of petitioners.

The "labor dispute" disqualifications *in* included in the Act only so that these funds will not support a strike. The eight weeks period was fixed because the records and figures on labor disputes show that the average length of a strike is eight weeks. (See Decision of Referee, pp. 16-17). There was no "dispute" or "strike" here [296] which unemployment funds were sought to finance. There was only a failure to negotiate a 1940 contract, and abandonment by the packers of the 1940 season, even though the workers were ready, willing and able to work on the same contract that they had in 1939. Certainly the workers' position was a fair one. They were unemployed through no fault of their own, and if the blame belongs anywhere, it is with the employers who tried to cut wages and conditions. A liberal construction of the Act, and serving the purposes for which the Act was adopted compel a decision in favor of petitioners.

XIII.

That the opinion of the District Court of April 30, 1942 is contrary to law in that the statements, findings and conclusions therein stated are not supported by the evidence and is based upon the erroneous interpretation of the Alaska Unemployment Compensation Law and particularly upon an

erroneous conception of what constitutes a "labor dispute" and what constitutes a labor dispute in "active progress" within the meaning of said law; that the errors in said opinion are substantially the same as those contained in the decision of the Commission and the specific assignments of error with respect to the Commission's findings and decision set forth in assignment of error No. XII are equally applicable to, and are adopted in full in the instant assignment of error.

Wherefore, applicants and appellants pray that the judgment may be reversed.

Dated at San Francisco, California, October 26, 1942.

ANDERSEN & RESNER
GEORGE R. ANDERSEN
HERBERT RESNER

Receipt of a copy of the foregoing is hereby acknowledged this 4th day of November, 1942.

H. L. FAULKNER

Attorneys for Alaska Packers
Association, Alaska Salmon
Company and Red Salmon
Canning Company, corpora-
tions, Respondents.

GROVER C. WINN

Atty. for Alaska Unemploy-
ment Comp. Comm.

[Endorsed]: Filed November 4, 1942. [297]

[Title of District Court and Cause.]

ORDER GRANTING LEAVE TO APPEAL.

The petitioners and appellants in the above entitled action having on November 4th, 1942, at Juneau, Alaska, served and filed, and on November 6th, 1942, at Ketchikan, Alaska, presented to the court, their assignment of errors and petition for leave to appeal and prayer for reversal to the United States Circuit Court of Appeals for the Ninth Circuit, all within the period of three months from the date of the decree entered herein on August 8th, 1942; and it further appearing to the court that said petitioners and appellants had theretofore, on October 31st, 1942, served and filed their notice of appeal and thereafter filed their \$250.00 cost bond with Maryland Casualty Company surety, both whereof were presented to the court at Ketchikan on November 6th, 1942, with said assignment of errors and said petition for allowance of appeal; and that on November 6th, 1942 all of the foregoing were taken under advisement by the court,—

Now, therefore, the law and the premises being fully understood and considered by the court, it is hereby ordered that leave be, and hereby is, granted to said petitioners and appellants to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the said judgment of August 8th, 1942 of the District Court for the Territory of Alaska, Division Number 1, at Juneau, as provided by law; and it is further ordered that the Clerk of

the District Court for the Territory of Alaska, Division Number 1, at Juneau, be, and he is hereby, directed and ordered to prepare and certify a transcript of the evidence, exhibits and all records, proceedings, papers and judgment in the above entitled cause, and transmit the same to the Clerk of the [298] United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within forty (40) days from date; and it is further ordered that said cost bond on appeal be, and same hereby is, approved.

Dated: Juneau, Alaska, this 30th day of January, 1943, nunc pro tunc as and for November 6th, 1942.

GEO. F. ALEXANDER,
District Judge.

Copy received January 28.

H. L. FAULKNER.

[Endorsed]: Filed and entered January 30, 1943.
[299]

[Title of District Court and Cause.]

NOTICE ON APPEAL

Notice is hereby given that the above named Petitioners and plaintiffs hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the

final decree entered in this action at Juneau, Alaska, on August 8th, 1942.

Signed: ANDERSEN & RESNER, of
San Francisco, California,
Counsel of Record.

By HOWARD D. STABLER,
Local Counsel of Attorneys
for Appellants.

Copy hereof received at Juneau, Alaska, October 31, 1942.

GROVER C. WINN,
Attorney for Unemployment
Compensation Commission
of Alaska.

H. L. FAULKNER,
Attorney for Alaska Packers
Association, Alaska Salmon
Company, and Red Salmon
Canning Company.

[Endorsed]: Filed October 31, 1942. [300]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents: That we, the above named Petitioners, as principal, and Maryland Casualty Company as surety, are held and firmly bound unto the above named defendants and the Territory of Alaska in the sum of Two Hundred and Fifty Dollars (\$250.00) to be paid to

them, and for the payment of which well and truly to be made, we bind ourselves, and each of us, our, and each of our, heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 4th day of November, 1942.

Whereas, the above named Petitioners, as appellants, seek to prosecute their appeal in the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree rendered in the above entitled action by the District Court for the Territory of Alaska, Division Number One,—

Now, therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect, and answer all costs and damages that may be adjudged, if they shall fail to make good their appeal, then this obligation to be void; otherwise to remain in full force and virtue.

FRANK L. ARAGON,

and other Applicants,

Members of Alaska Cannery
Workers Union Local No. 5
and Alaska Cannery Work-
ers Union Local No. 5, on
behalf of Applicants,

By HOWARD D. STABLER,

Their Attorney in fact.

MARYLAND CASUALTY
[Seal] COMPANY, Surety,
By ALLEN SHATTUCK,
Its Agent and Attorney in
fact.

[Endorsed]: Filed November 4, 1942. [301]

[Title of District Court and Cause.]

ORDER EXTENDING TERM & TIME FOR AP-
PEAL AND FOR APPEAL AND FOR PRE-
SENTING BILL OF EXCEPTIONS.

On this sixth day of November, 1942, this matter came before the Court at Ketchikan, Alaska, for an order extending the term and time for filing and presenting a bill of exceptions and perfecting appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the within entitled action for additional period of 40 days from and after expiration of the three months from August 8th, 1942, allowed by law therefor.

And it appearing to the Court that attorneys for defendants herein have made and filed objections to the granting of such order, and that the records and files herein are at Juneau, Alaska, and that the Court has insufficient information or recollection thereof to enable him to pass on the merits of said motion intelligently without the records and files herein, and said records and files cannot be secured or made available to the Court for some

time, due to present uncertainties and delays in the mails and other transportation.

And it further appearing that the attorneys for defendants reside in Juneau, Alaska, and that defendants have a resident attorney there, and only has a special attorney here who has had no previous connection with this case, and said attorneys for defendants having requested that plaintiffs' motion be heard on its merits before being passed upon.

And it further appearing that this Court is now engaged in holding a regular jury term of this court at Ketchikan and will not be able to finish here so as to be able to return to Juneau for at least a month hence, and the Court being convinced that the ends of justice require that such extension of time be made. [302]

Now, Therefore, the premises considered, it is hereby ordered that the time for hearing the motion hereinbefore mentioned and referred to, be and the same is hereby extended for 45 days from this date, subject to any and all rights in the premises which the parties or either of them now have, all of which present rights are hereby preserved until plaintiffs' motion can be heard and decided on its merits.

Done in Ketchikan, Alaska, this 6th day of November, 1942.

GEO. F. ALEXANDER

Judge.

[Endorsed]: Filed and entered November 6, 1942.

[303]

[Title of District Court and Cause.]

ORDER FURTHER EXTENDING TERM AND
TIME FOR APPEAL AND FOR PRESENT-
ING BILL OF EXCEPTIONS.

On December 19th, 1942, this matter came before the above entitled court at Juneau, Alaska, on petitioners' oral motion for extension of the time specified in the court's order in the within entitled action made at Ketchikan, Alaska, on November 6th, 1942, for an additional forty (40) days for the reasons that the time specified in said order made November 6th, 1942, would soon expire, and the records and files in said action had not yet been returned from Ketchikan. Attorney Howard D. Stabler represented the petitioners; and attorney H. L. Faulkner represented the Defendants and Respondents. And, said attorney for the Defendants and Respondents consenting, it was Ordered that the time for presenting and hearing the matters specified in said order of November 6th, 1942, be, and same was, extended for the additional period of forty (40) days from December 19th, 1942; and provided that within said extended period of time, when said records and files were returned, said matters should be presented and heard at the convenience of respective counsel and the court.

Done at Juneau, Alaska, the day, month and year hereinabove first written.

GEO. F. ALEXANDER

District Judge.

Copy Hereof Received

H. L. FAULKNER

Attorney for Defendant Re-
spondents.

[Endorsed]: Filed and entered December 22, 1942.

[304]

[Title of District Court and Cause.]

STIPULATION FOR HEARING

It is stipulated by and between respective counsel for the parties hereto that the appeal, if allowed, in the above entitled matter, shall be presented to and heard in the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California; and that the title of the court and cause may be omitted by the Clerk of the above court from the transcript of record in the above entitled cause, after the title of the cause has been once printed.

Dated: October 26, 1942.

ANDERSEN & RESNER

By: HERBERT RESNER

(Attorneys for Appellants)

GROVER C. WINN

Attorney for Unemployment Compensation Commission of the Territory of Alaska; Noble Dick, R. E. Harcastle and R. S. Bragaw, as members of and constituting said Commission.

H. L. FAULKNER

Attorneys for Alaska Packers, Association, Alaska Salmon Company, and Red Salmon Canning Company, corporations.

[Endorsed]: Filed February 13, 1943 [305]

CITATION

United States of America,—ss.

The President of the United States of America to Unemployment Compensation Commission of the Territory of Alaska; Noble Dick, R. E. Harcastle and R. S. Bragaw, as members of and constituting said Commission; and Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, corporations, respondents, Greeting:

You Are Hereby Cited and Admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within forty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court

for the Territory of Alaska, Division No. 1, at Juneau, wherein Frank L. Aragon and other applicants, Members of Alaska Cannery Workers Union Local No. 5, and Alaska Cannery Workers Union Local No. 5, on behalf of applicants, are appellants, and you are appellees, to show cause, if any there be, why the decree or judgment rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Geo. F. Alexander United States District Judge for the Territory of Alaska, Division 1, at Juneau, this 13th day of February, A. D. 1943

[Seal]

GEO. F. ALEXANDER

United States District Judge.

O.K.

GROVER C. WINN

Copy received Feb. 13-1943

H. L. FAULKNER

Atty for Alaska Packers Assn.

et al [306]

United States of America,—ss.

On this 13th day of February, in the year of our Lord one thousand nine hundred and Forty Three, personally appeared before me, Howard D. Stabler, the subscriber, a citizen of the United States, over 21 years of age, and competent to be a witness in the within matter and makes oath that he delivered

a true copy of the within citation to Grover C. Winn attorney of record for Unemployment Compensation Commission of the Territory of Alaska; Noble Dick, R. E. Hardeastle and R. S. Bragaw, as members of and constituting said Commission; and to H. L. Faulkner, attorney of record for Alaska Packers Association, Alaska Salmon Company, and Red Salmon Canning Company,

HOWARD D. STABLER

Subscribed and sworn to before me at Juneau, Alaska, this 13 day of February, A. D. 1943

[Seal]

ROBERT E. COUGHLIN

Clerk of District Court Territory of Alaska, Division #1

[Endorsed]: Filed Feb 13, 1943 [306a]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above entitled Court:

Please prepare as the record on appeal in the above entitled matter the following:

1. Transcript of evidence, all exhibits, and all files, but excluding briefs, of Referee's hearing before the Alaska Unemployment Commission.
2. Decision of Referee dated September 21, 1940.
3. Decision of Alaska Unemployment Commission dated November 18, 1940. [307]
4. Petition for review in the above entitled Court.

5. Summons on petition for review in the above entitled Court.

6. Respondent's answer to petition for review in the above entitled Court.

7. Request to set definite time for hearing or to submit briefs in the above entitled Court.

8. Stipulation submitting cause on briefs in the above entitled Court.

9. Opinion of Honorable George F. Alexander dated April 30, 1942 in the above entitled Court.

10. Findings of Fact and Conclusions of Law in the above entitled Court.

11. Judgment and Decree in the above entitled Court.

12. Petition for leave to appeal in the above entitled Court.

13. Assignment of Errors in the above entitled Court.

14. Order granting leave to appeal in the above entitled Court.

15. Notice of appeal; cost bond on appeal.

16. Order of November 6, 1942 and December 19, 1942, extending time to perfect appeal etc.

17. Stipulation for hearing to be had at San Francisco in the United States Circuit Court of Appeals for the Ninth Circuit.

18. Citation to respondents in the above entitled Court. Dated: February 13, 1943.

19. This Praecipe.

ANDERSEN & RESNER

HERBERT RESNER

Attorneys for applicants and
appellants.

OK Copy received.

GROVER C. WINN

Copy received Feb. 13-1943

H. L. FAULKNER

Atty for Alaska Packers' Assn
et al [308]

The United States Circuit Court of Appeals
for the Ninth Circuit

No.

FRANK L. ARAGON, and other Applicants, Mem-
bers of Alaska Cannery Workers Union Local
No. 5, and ALASKA CANNERY WORKERS
UNION LOCAL NO. 5, on behalf of Appli-
cants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COM-
MISSION OF THE TERRITORY OF
ALASKA; NOBLE DICK, R. E. HARD-
CASTLE and R. S. BRAGAW, as members
of and constituting said Commission; and
ALASKA PACKERS ASSOCIATION, a cor-
poration; ALASKA SALMON COMPANY, a
corporation, and RED SALMON CANNING
COMPANY, a corporation,

Appellees.

ORDER EXTENDING TIME TO FILE
RECORD ON APPEAL

The Court having read and considered the af-
fidavit of Herbert Resner filed herein, and Good
Cause Appearing to the Court Therefor,

It Is Hereby Ordered that Appellants' time to
file the record on appeal herein is extended to and
including May 15, 1943.

Done in Chambers This 16th day of April, 1943.

CURTIS D. WILBUR

Senior Judge of the Circuit
Court of Appeals for the
Ninth Circuit.

Copy received April 24, 1943.

H. L. FAULKNER,

Atty for Alaska Packers As-
sociation et al.

[Endorsed]: Filed April 24, 1943. [309]

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF HERBERT RESNER

State of California

City and County of San Francisco—ss.

Herbert Resner, being first duly sworn, deposes and says: That he is of counsel for appellants in the above entitled matter; that an appeal is being taken by appellants to the above entitled Court from an Order from the District Court for the Territory of Alaska, Division Number One; that the record has not yet been completed and made ready for filing by the Clerk of said District Court; that affiant is in receipt of a telegram from counsel associated with him at Juneau, Alaska, as follows:

“Juneau, Alaska, April 14, 1943.

“Anderson and Resner Attys

“544 Market St. San Francisco

“It will be another ten days or more before our

Clerk will have the Aragon record ready to forward to you for filing in Circuit Court and I think you should arrange enlargement of time in Appellate Court for filing same Stop They are short handed here and are delayed getting it out.

“HOWARD D. STABLER.”

Wherefore, affiant prays that the time for appellants to file the record herein be extended to and including May 15, 1943.

HERBERT RESNER

Subscribed and sworn to before me this 15th day of April, 1943.

[Seal]

ALICE C. MORSE

Notary Public, in and for the City and County of San Francisco, State of California. [310]

In the District Court for the District of Alaska
Division No. 1, at Juneau

United States of America,
District of Alaska,
Division No. 1—ss.

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

I, Robert E. Coughlin, Clerk of the District Court for the Territory of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 310 pages of typewritten matter, numbered from 1 to 310, both inclusive, constitute a full, true, and com-

plete copy, and the whole thereof, of the record prepared in accordance with the praecipe of the appellant on file herein and made a part hereof, in cause No. 4620-A wherein Frank Aragon et al are appellants and Unemployment Compensation Commission of Alaska, et al are the appellees and Alaska Packers Association and Alaska Salmon Co. and Red Salmon Company, corporations, are respondents as the same appears of record and on file in my office, and that said record is by virtue of an appeal and Citation issued thereon in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to One hundred fifty eight & 75/100 (158.75) Dollars has been paid to be my counsel for Appellants.

In Witness Whereof I have hereunto set my hand and the seal of the above-entitled Court this 3rd day of May, 1943.

[Seal]

ROBERT E. COUGHLIN

Clerk

By J. W. LEIVERS

Deputy

[Endorsed]: No. 10425. United States Circuit Court of Appeals for the Ninth Circuit. Frank L. Aragon and other applicants, Members of Alaska Cannery Workers Union Local No. 5, and Alaska Cannery Workers Union Local No. 5 on behalf of applicants, Appellants, vs. Unemployment Compensation Commission of the Territory of Alaska, Noble Dick, R. E. Harcastle and R. S. Bragaw, as members of and constituting said Commission, and Alaska Packers Association, a corporation, Alaska Salmon Company, a corporation, and Red Salmon Canning Company, a corporation, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Alaska, First Division.

Filed May 7, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10425

FRANK L. ARAGON, and other Applicants, Mem-
bers of Alaska Cannery Workers Union Local
No. 5, and ALASKA CANNERY WORKERS
UNION LOCAL NO. 5, on behalf of Appli-
cants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COM-
MISSION OF THE TERRITORY OF
ALASKA; NOBLE DICK, R. E. HARD-
CASTLE and R. S. BRAGAW, as members of
and constituting said Commission; and
ALASKA PACKERS ASSOCIATION, a cor-
poration; ALASKA SALMON COMPANY, a
corporation, and RED SALMON CANNING
COMPANY, a corporation,

Appellees.

STATEMENT OF POINTS ON WHICH AP-
PELLANTS INTEND TO RELY ON AP-
PEAL.

Appellants hereby adopt as their points on appeal
each and every one of the Assignments of Error
appearing in the Transcript of the record on file
herein, which Assignments of Error were made in
the Court below.

Dated: San Francisco, California, May 10, 1943.

ANDERSEN & RESNER

GEORGE R. ANDERSEN

HERBERT RESNER

HOWARD STABLER

Attorneys for Appellants.

Receipt of a copy of the within Statement of Points on which Appellants Intend to Rely on Appeal is hereby admitted this 12 day of May, 1943.

PILLSBURY, MADISON &

SUTRO

Attorneys for Respondents,

Alaska Packers Association

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL OF
STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY ON
APPEAL.

State of California

City and County of San Francisco—ss.

Ann Ferguson, being first duly sworn, deposes and says:

That she is now and at all times herein mentioned was a citizen of the United States, residing at 3415 Pierce Street in the City and County of San Francisco, State of California, where the mailing herein referred to took place; that she is over the age of twenty-one years, not a party to the

within entitled cause, or interested in the event thereof; that she has hertofore, to-wit: On the 12th day of May, 1943, made this service for Andersen & Resner, who are the attorneys for the Appellants in this action, and who have their offices at 544 Market Street, San Francisco, California; that Faulkner & Banfield are the attorneys for the Appellees, Alaska Packers Association, Alaska Salmon Company and Red Salmon Company, and the offices of said attorneys for said Appellees were at all times herein mentioned and still are located at Juneau, Alaska; that Grover C. Winn is the attorney for the Appellee, Unemployment Compensation Commission of the Territory of Alaska, and the offices of said attorney for said Appellee were at all times herein mentioned and still are located at Juneau, Alaska; that Earl, Hall & Gerdes are the attorneys for the Appellee, Alaska Salmon Company, and the offices of said attorneys for said Appellee were at all times herein mentioned and still are located at 215 Market Street, San Francisco, California; that at all times herein mentioned there was and still is regular communication by United States mail between the said City and County of San Francisco and said Juneau, Alaska, and between points in the City and County of San Francisco; that on the 12th day of May, 1943, deponent served the within Statement of Points On Which Appellants Intend To Rely On Appeal for the above named Andersen & Resner, attorneys for said Appellants, by mail, in the following manner, to-wit: deponent inclosed said Statement of Points On

Which Appellants Intend To Rely On Appeal in envelopes addressed as follows:

Faulkner & Banfield
Attorneys at Law
Juneau, Alaska

Grover C. Winn, Esq.
Attorney at Law
Juneau, Alaska

Earl, Hall & Gerdes
Attorneys at Law
215 Market Street
San Francisco, California

sealed the same, and deposited them, on the last named day, so sealed and addressed, with the said enclosure, and with the postage thereon fully prepaid, in the United States Post Office, in the City and County of San Francisco, State of California.

ANN FERGUSON

Subscribed and sworn to before me this 12th day of May, 1943.

[Seal] ALICE C. MORSE

Notary Public, in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed May 13, 1943. Paul P.
O'Brien, Clerk.

No. 10,425

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK L. ARAGON, and other Applicants,
Members of Alaska Cannery Workers
Union Local No. 5, and ALASKA CAN-
NERY WORKERS UNION LOCAL No. 5, on
behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMIS-
SION OF THE TERRITORY OF ALASKA;
NOBLE DICK, R. E. HARDCASTLE and
R. S. BRAGAW, as members of and con-
stituting said Commission; and ALASKA
PACKERS ASSOCIATION (a corporation);
ALASKA SALMON COMPANY (a corpora-
tion), and RED SALMON CANNING COM-
PANY (a corporation),

Appellees.

BRIEF FOR APPELLANTS.

ANDERSEN & RESNER,
GEORGE R. ANDERSEN,
HERBERT RESNER,

544 Market Street, San Francisco,

Attorneys for Appellants.

FILED

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No. 10,425

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK L. ARAGON, and other Applicants,
Members of Alaska Cannery Workers
Union Local No. 5, and ALASKA CAN-
NERY WORKERS UNION LOCAL No. 5, on
behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMIS-
SION OF THE TERRITORY OF ALASKA;
NOBLE DICK, R. E. HARDCASTLE and
R. S. BRAGAW, as members of and con-
stituting said Commission; and ALASKA
PACKERS ASSOCIATION (a corporation);
ALASKA SALMON COMPANY (a corpora-
tion), and RED SALMON CANNING COM-
PANY (a corporation),

Appellees.

BRIEF FOR APPELLANTS.

STATEMENT.

This is an appeal from a judgment and decision of the District Court of the United States in and for the Territory of Alaska, at Juneau, affirming on review a decision of the Unemployment Compensation Commission of Alaska (hereafter designated Commission) denying unemployment benefits to Appellants.

PLEADINGS AND JURISDICTION.

This case was commenced when Appellants claimed benefits under the Alaska Unemployment Compensation Law (Alaska Stats., Ch. 4, Extraordinary Session Laws of 1937, as amended by Ch. 1 and 51, S. L. 1939—hereafter designated Act) for the 1940 Alaska salmon season during which period they were unemployed.

From an original determination by the Commission denying benefits to Appellants (members of the Alaska Cannery Workers Union—hereafter designated Union), they took an appeal.

Pursuant to the Act, the Commission appointed a Referee, Henry Roden, to take evidence. The Referee found in favor of Appellants and ordered benefits paid. (R. p. 608.)

Appellees (the Commission and Appellants' employers—Alaska Packers Association, Alaska Salmon Company, and Red Salmon Canning Company) took an appeal to the Commission which reversed the Referee and denied benefits. (R. p. 644.)

Appellants filed a petition in the District Court to review the decision of the Commission. (R. p. 650.)

The District Court had jurisdiction under Section 6(i) of the Act. (R. p. 651.)

The District Court affirmed the Commission's decision and held against Appellants. (R. p. 692.)

This appeal followed. (R. p. 746.)

This Court has jurisdiction by virtue of the provisions of Section 128 of the Judicial Code, 28 U. S. C. A. 225.

STATEMENT OF FACTS.

The question presented on this appeal, as in the various hearings below, is this: *Were Appellants unemployed during the 1940 Alaska salmon season because of a labor dispute in active progress at the establishment at which they were last employed within the meaning of Section 5(d) of the Act?* If they were, then the decision of the District Court must be affirmed. If they were not, the District Court must be reversed.

We invite particular attention to the decision of Referee Roden who, as trier of the facts, had the opportunity to hear the witnesses at first hand and whose findings should therefore be entitled to great weight. He made rather a complete statement of the facts. (R. pp. 608-612.)

All of the Appellants were employed as cannery workers by either Alaska Packers, Alaska Salmon, or Red Salmon in Alaska during the 1939 salmon season. *When the 1939 season ended, the employment of each worker was finished, and he was separated from his employer's payroll as a result of the season's being at an end. Thereupon, the employer-employee relationship between them terminated and was never resumed.*

Appellants worked during 1939 under a contract between their Union and the Employers. That contract by its terms was to be renewed from year to year unless either party terminated it. In the fall of 1939 the Employers terminated the contract. (R. p. 267.)

Negotiations between the Union and the Employers commenced in March of 1939 and continued during

that month and April, 1939. The Union submitted a contract which called for wage increases and other improvements over the 1939 contract. (R. p. 275.) The Employers rejected this. The Employers offered the Union a contract which proposed wage reductions and other poorer conditions than were provided by the 1939 contract. The Union rejected the Employers' proposal. The Union finally offered to re-execute the 1939 San Francisco contract. The Employers refused. The Employers never at any time offered to re-execute the 1939 San Francisco contract.

On April 3, 1940, the Employers notified the Union that if an agreement were not reached by April 10, 1940, the Karluk expedition would be called off; and if no contract were reached by April 12, 1940, the Chignik operation would be called off. (R. p. 325.) Those "deadline" dates came and passed without a contract, and the operations were called off, and the matter was at an end between the parties so far as these operations for 1940 were concerned. The parties never met again concerning them nor did they discuss these operations after the "deadline" dates fixed by the Employers.

On April 26, 1940, the Employers notified the Union that unless an agreement were reached for the Bristol Bay operations by May 3, 1940, that operation would be called off. (R. p. 378.) *In the same letter, the Employers notified the Union that Alaska Salmon would not undertake any Bristol Bay operation during 1940.*

The May 3, 1940, deadline came and went without a contract for Bristol Bay, and the Employers called off

that operation. After that date the parties met no more and did nothing further with respect to Bristol Bay for 1940. The Bristol Bay season was called off by the Employers, as had been Karluk and Chignik, and that was that.

It should be noted that the Commission by Benefit Regulation No. 10 (R. p. 199) had fixed the

Karluk season: April 5th-September 5th;

Chignik season: April 1st-September 10th;

Bristol Bay season: May 5th-August 5th.

Negotiations terminated on, and neither party did anything further with respect to 1940 operations at the respective areas after the following dates:

Karluk: April 10, 1940;

Chignik: April 12, 1940;

Bristol Bay: May 3, 1940.

At the Referee's hearing it was testified, and it is not denied, that the Union and the Appellants never called a strike against, nor were they on strike against the Employers during 1940. Obviously, the Appellants never went to Alaska. The operations were never started during 1940, and there was no operation to be interrupted by either strike or picket line.

The Appellants testified that they were willing and able to work at any time during 1940 in Alaska on the same basis that they worked in 1939. (R. pp. 84-85.) However, no work was made available by the Employers to the Appellants on the basis of the 1939 San Francisco agreement. In fact, no work was made available to Appellants by the Employers for 1940.

Referee Roden found that a "labor dispute" existed, but that *it was not in active progress* at Karluk after April 10, 1940, nor at Chignik after April 12, 1940, nor at Bristol Bay after May 3, 1940, and that *accordingly claims filed for unemployment after those dates should be allowed*.

The Commission and the District Court found that there was both a "labor dispute" and that it was "in active progress" during the entire 1940 season, and accordingly denied Appellants benefits for the whole season.

Appellants assert that there was not a "labor dispute" within the meaning of the Act and therefore they were not at any time disqualified for benefits, but that if there were a "labor dispute" it was not in "active progress" after the dates and for the reasons stated in Referee Roden's decision.

SPECIFICATION OF ERRORS RELIED UPON.

Appellants rely upon all of the errors specified which appear at R. pp. 722-745. These are as follows:

I.

Finding of Fact No. 5 made by the District Court is not supported by the evidence adduced before the Referee and the Commission in that no labor dispute, within the meaning of the Act, existed between Appellants and Employers. The alleged labor dispute did not continue and did not remain in active progress as stated by said finding. (See R. pp. 711-718 for Findings of Fact and Conclusions of Law.)

II.

Finding of Fact No. 6 made by the District Court is irrelevant and immaterial in that it makes no difference whatsoever to this proceeding when Appellee companies find it necessary to make preparation for the Alaska salmon packing season, but the only issue in this case is whether Appellants are entitled to benefits under the Act in view of the evidence adduced before the Referee and the Commission.

III.

Finding of Fact No. 7 made by the District Court is not supported by the evidence in that said finding assumes that a labor dispute existed and continued whereas the fact is that no labor dispute existed or continued or was in active progress during the 1940 Alaska salmon packing season within the meaning of the Act. Appellants take no exception to said finding insofar as it sets forth the dates given by Employers as their deadlines for the execution of collective bargaining agreements. Insofar as Finding No. 7 finds that canning operations could not be undertaken unless agreements were reached before the dates set forth, said finding is improper in that said matter is immaterial and irrelevant to the rights of Appellants to have unemployment benefits.

IV.

With respect to Finding of Fact No. 8 made by the said District Court the only part of said finding that is proper is as follows: "That no agreement was reached." The balance of said finding is immaterial

and irrelevant and is not a proper finding and has no relation whatsoever to the issue involved in this case, namely, the right of Appellants to be awarded unemployment benefits for the 1940 season.

V.

Finding of Fact No. 9 made by the District Court is not supported by the evidence in the following respects:

(1) No labor dispute existed within the meaning of the Alaska Unemployment Compensation Law.

(2) Admitting for the sake of argument that a labor dispute existed at one time, it did not exist and was not in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season as defined by the Commission, but said labor dispute was in active progress at Chignik only from April 1, 1940, to April 12, 1940, and terminated on April 12, 1940, and was not in active progress at Chignik during the balance of the 1940 season; that said labor dispute was in active progress at Karluk only from April 5, 1940, to April 10, 1940, and terminated on April 10, 1942, and was not in active progress at Karluk during the balance of the 1940 season; that at the commencement of the season at Bristol Bay no labor dispute was in active progress, and no labor dispute existed with respect to the Bristol Bay operations at any time during the 1940 season.

VI.

Finding of Fact No. 10 made by the District Court is not supported by the evidence adduced before the

Referee and the Commission in that the unemployment of Appellants during the 1940 season was not due to a labor dispute existing between Appellants on the one hand and Appellee companies on the other; and admitting for the sake of argument that a labor dispute existed at one time, said labor dispute was not in active progress during the said 1940 season in the plants where Appellants were respectively last employed, but said labor dispute, if any, terminated at Chignik on April 12, 1940, and terminated at Karluk on April 10, 1940, and was not in existence at all at Bristol Bay during the 1940 Bristol Bay season.

VII.

Finding of Fact No. 11 made by the District Court is not supported by the evidence adduced before the Referee and the Commission, but on the contrary the conclusions of law and the decision of the Alaska Unemployment Compensation Commission were not supported by the evidence, and the said findings of the Commission were not sufficient, but on the contrary the Commission should have made findings of fact on matters which the Commission ignored, and which were necessary to a proper determination of the case, as follows:

1. What facts are necessary to show a "labor dispute" within the meaning of the Act? Must there be a strike, walk-out, presently existing employer-employee relationship terminated by dispute, picket line, a job to strike? What bearing does the absence of these factors have in the instant case?

2. Is Appellants' unemployment "due" to a labor dispute, or is it "due" to the curtailment in Alaska Packers' Bristol Bay operations, and the failure of Alaska Salmon to operate for reasons unconnected with labor, and finally is not the unemployment of Appellants "due" to the seasonal nature of their work and the fact that they were never re-employed in 1940, rather than an alleged labor dispute?

3. If there was a dispute, how long did it remain in "active" progress? Did not the dispute terminate when the Employers abandoned their operations, for Karluk on April 10, 1940; Chignik on April 12, 1940; and Bristol Bay on May 3, 1940? Was not the Referee correct in so finding, and was not the Commission in error in not considering this fundamental finding, and indicating where it was wrong, if it was wrong?

4. In what way do negotiations which do not result in a contract constitute a labor dispute within the meaning of the Act?

VIII.

Finding of Fact No. 12 made by the District Court is not supported by the evidence and the evidence shows, contrary to said finding, that the Alaska Salmon Company would not have conducted its 1940 salmon packing operations regardless of whether a collective bargaining agreement had been entered into with the Union and its members or not.

IX.

Finding of Fact No. 13 made by the District Court is not supported by the evidence. Appellants did make

objections to the findings of the Commission according to the provisions of the Alaska Unemployment Compensation Law by appealing the decision of said Commission to the above entitled Court and filing in this Court their petition for review of said decision on January 8, 1941. That what this finding probably intended to state was that Appellants made no objections to and took no appeal from the findings of the Referee who heard the matter originally, and while it is true that Appellants did not appeal from the decision and findings of the Referee, that when Appellee companies took an appeal to the Commission, the entire matter before the Referee was reopened before the Commission, and everything which Appellants presented to the Commission on the Appellees' appeal was therefore proper and according to law. The findings of the Commission are not conclusive upon Appellants because said findings are contrary to and not supported by the evidence and such a decision is appealable and the evidence may be reviewed to determine if it supports the findings, as provided by Section 6(i) of the Alaska Unemployment Compensation Law.

X.

Conclusion of Law No. 1 made by the District Court is in error and contrary to law in that Appellants were not unemployed because they were unwilling to accept employment offered them or because of a labor dispute which was in active progress during the entire 1940 Alaska salmon packing season but, on the contrary, said Appellants were unemployed during the said 1940 season because Appellee companies failed and refused

to employ Appellants and failed and refused to enter into a collective bargaining agreement with the Union of which Appellants were members. Said conclusion of law is contrary to and not supported by the evidence in that the evidence shows that if a labor dispute existed, it terminated at Chignik on April 12, 1940, at Karluk on April 10, 1940 and was not in existence at all at Bristol Bay during the said 1940 season, and therefore Appellants were entitled to benefits accordingly.

XI.

Conclusion of Law No. 2 made by the District Court is not proper and is contrary to law in that the definition therein stated of what constitutes an active labor dispute within the meaning of the Alaska Unemployment Compensation Law is wrong, but that an active labor dispute within the meaning of said Act means an actual dispute between employer and employee whereby the relationship of employer and employee is terminated and employees remain away from work because of a dispute with their employer over wages, hours or other conditions or incidents to employment. That the declared purpose of the law requires that benefits be paid rather than denied in this case.

XII.

Conclusion of Law No. 3 made by the District Court is improper and contrary to law in that the findings and decision of the Alaska Unemployment Commission are improper, not supported by the evidence, contrary to the evidence and contrary to law and thereby said

findings and decision should have been set aside and reversed. That Appellants are entitled to benefits for their unemployment during the entire 1940 season and should have been paid said benefits. That specifically Appellants urge the following assignments of error in connection with the findings and decision of the Commission:

1. *Certain findings of fact made by the Commission are not supported by the evidence.*

A. The Commission found as a fact that "negotiations for (a 1940) agreement were entered into between said parties (Employers and Union) and were in active progress at the opening of the canning season as set forth in said Regulation No. 10." (Our italics.)

Exception to said finding:

(1) Regulation No. 10 provides that the Bristol Bay season was to open on May 5, 1940. The evidence offered by the Employers themselves (and Appellants do not dispute it) shows that the negotiations for the Bristol Bay operations terminated at midnight May 3, 1940, and that the Employers abandoned the season at that time which they had fixed as their "deadline" to reach a 1940 agreement with the Union. (See Employers' Exhibit "X", Appellants' Exhibit "19", R. pp. 382, 230. See also decision of Special Referee Henry Roden, R. p. 611, finding that negotiations for Bristol Bay terminated at midnight May 3, 1940, and that the Employers abandoned the Bristol Bay season at that time.)

It follows without answer that the Commission's finding of fact that negotiations were in active progress at the opening of the season as fixed by Regulation No. 10 is in error and not supported by the evidence insofar as the Bristol Bay operations are concerned.

(2) In addition, the Alaska Salmon Company abandoned its entire 1940 operations on April 30, 1940, five days before the season at Bristol Bay opened. (See Appellants' Exhibit "2".) This company operates only at Bristol Bay. It follows that the Appellants employed in 1939 by Alaska Salmon Company are unquestionably entitled to benefits, and the Commission's finding is in error insofar as it finds that Alaska Salmon Company was carrying on active negotiations at the time of the opening of the Bristol Bay season as fixed by Regulation No. 10.

We conclude that there were no negotiations for Bristol Bay after May 3, 1940, and that all Appellants employed at Bristol Bay in 1939 are without question entitled to benefits for the full season and are subject to no labor dispute disqualification. This includes all the 1939 employees (members of the Union) of Alaska Salmon Company and Red Salmon Canning Company, who operate only at Bristol Bay; and those employees of Alaska Packers who were employed at Bristol Bay in 1939.

B. The Commission found as a fact that the Employers notified the Appellants "of the *necessity* of entering into a new working agreement for the canning season of 1940". (Our italics.)

Exception to said finding:

(1) Insofar as this finding means that a new agreement was to be reached between the parties for the 1940 season if there was to be an operation by the San Francisco Employers, the finding is proper and supported by the evidence. But insofar as it leaves the inference that the Employers were ready to sign an agreement but the Union was not, the finding is not supported by the evidence. The Employers wanted to sign a 1940 agreement on terms less favorable to the Union than the Union enjoyed in 1939. The onus cannot be placed on the Union for failing to arrive at an agreement. The blame, if it belong anywhere, rests with the Employers who without justification or reason wanted the Union to accept less favorable terms and conditions than the workers enjoyed in 1939, while the Union wanted at least a renewal of the 1939 agreement. The Appellants were at all times ready, willing and able to work on 1939 wages and terms. The use of the word "necessary" is therefore not supported by the evidence insofar as the inference is left that the Employers were not at fault in the failure of the parties to reach an agreement for the 1940 season.

(2) Alaska Salmon Company abandoned its 1940 operation on April 30, 1940 (Appellants' Exhibit "2"), and would not have operated during 1940 irrespective of whether there had been or had not been an agreement with the Union. (See R. p. 589, stipulation by Mr. Oliver, counsel for Alaska Salmon, to that effect.)

It follows that the operators and particularly Alaska Salmon Company did not find it "necessary" to reach an agreement for the 1940 season.

2. *The conclusions of law and decision of the Commission are not supported by the findings of fact.*

A. The Commission concluded that "there was an active labor dispute existing between the parties at the opening of the season".

This conclusion must be separated into its two parts: First, that that was a "*labor dispute*", and second, that there was an "*active*" labor dispute at the *opening of the season*.

The Commission's "findings of fact" can be briefly summarized as follows:

1. That all Appellants were employees of the Employers during the 1939 seasonal canning industry as provided in Regulation No. 10.

2. That the Employers cancelled the 1939 agreement with the Union.

3. That the Employers notified the Union of the "necessity" of entering into a new agreement for the 1940 canning season.

4. That the Union admitted receipt of the notice of the cancellation of the 1939 agreement.

5. That thereafter, negotiations for the 1940 season occurred.

6. That the salmon cannery industry is seasonal.

7. That dates for which unemployment benefits could be allowed were provided by Regulation No. 10.

8. That Employers and Appellants were aware of this condition.

9. That the dates of operation of the canneries in the districts involved in this controversy as fixed by Regulation No. 10 are as follows:

Karluk: April 5-September 25;

Chignik: April 1-September 10;

Bristol Bay: May 5-August 25.

10. That following the notice of cancellation of the 1939 agreement by Employers, negotiations for a 1940 agreement between the parties commenced.

11. That the negotiations were in active progress at the opening of the season as set forth in Regulation No. 10.

12. That no agreement was ever entered into between the parties prior to the opening of the season, or thereafter.

13. Quoting from the Declaration of Territorial Public Policy of the Act that benefits were to be paid to persons unemployed through no fault of their own.

Exception to said conclusion:

(1) Appellants submit that these findings do not support a conclusion that a "labor dispute" existed between the parties. All that can be concluded from the Commission's findings is that the parties negotiated for, but did not arrive at a 1940 agreement. We submit, that it is not a "labor dispute" within the meaning of the Act. There are no findings to support a conclusion that a "labor dispute" existed.

(2) Appellants submit that these findings do not support the conclusion that there was an "*active* labor dispute existing between the parties at the *opening of*

the season". (Our italics.) The Commission has failed to separate the various areas of operation with regard to the opening of the season. For the sake of argument (but not admitting it) let us say a "labor dispute" occurred between the parties. The Employers abandoned the Chignik operation on April 12, 1940; the Karluk operation on April 10, 1940; and the Bristol Bay operation on May 3, 1940. After those dates, the Employers and the Union did nothing with regard to the 1940 season for the respective areas. The parties dropped the matter. The Employers called off the season. In the words of Referee Roden, the parties treated the matter as a "dead horse". (See decision of Referee Roden, R. p. 640; Employers' Exhibits "U" and "X"; Appellants' Exhibits "2" and "19".)

Bear in mind that the seasons opened as follows:

Karluk, April 5th;

Chignik, April 1st;

Bristol Bay, May 5th.

While it may be argued that the "labor dispute" was in active progress with respect to Chignik and Karluk by reference to the above dates at the opening of the season in those areas, the same thing cannot be said for Bristol Bay. There the "dispute" terminated, the negotiations ended, and the season was abandoned on May 3, 1940, two days before the season opened. We submit that there was no "active labor dispute" at Bristol Bay at the "*opening of the season*" there.

Therefore, the conclusion that "an active labor dispute existed between the parties at the opening of the season" is not supported by the findings of fact.

B. The Commission concluded that “the dispute *continued*”. (Our italics.)

That conclusion is not supported by the findings. There are no *findings* that the dispute (if there was one) *continued* to any *particular day* with reference to any of the three areas in question. Nor is there any *conclusion* regarding the day to which the “dispute” continued. For all that appears from the decision, the dispute still continues and will continue to continue, and there is no indication as to when it will end if ever. As a matter of fact, the dispute, if there was one, ended with regard to Karluk on April 10, 1940; at Chignik on April 12, 1940; and at Bristol Bay on May 3, 1940; all as noted above.

C. The decision reversing the Referee, and disqualifying Appellants for eight weeks each is in error, because as indicated above there are no findings to support a conclusion that a labor dispute existed, or that if there was a dispute, that it continued beyond the dates mentioned for the respective areas; and the decision is in error in disregarding the uncontradicted evidence that the negotiations for Bristol Bay ended, and the season for that area was abandoned, on May 3, 1940, two days before the season was to open.

3. *The conclusions of law and decision of the Commission are not supported by the evidence.*

A. The conclusion that there was a “labor dispute” is not supported by the evidence.

The uncontradicted evidence shows that the Union did not declare a strike, and did not picket the Em-

ployers, and did not strike or picket because there was no operation to strike or picket; that there was no employer-employee relationship existing between the parties at the beginning of the 1940 season; that the last time the Appellants were employees of the Employers or on their payroll was at the conclusion of the 1939 season, and when that season ended, the employee-employer relationship between the parties ended.

The evidence further shows that the Employers wanted the Union to accept a reduction of the 1939 San Francisco contracts, and only offered the Union either the 1939 or 1940 *Seattle* agreement, whichever was most favorable to the Union. That the Employers never retreated from this stand. That the Union proffered a 1940 contract which was more advantageous to it than the 1939 San Francisco contract. That this was rejected by the Employers, and the Union finally offered to re-execute the 1939 San Francisco contract, which the Employers refused. That the Employers abandoned their respective operations as their stated "deadlines" occurred; Karluk, April 10, 1940; Chignik, April 12, 1940; Bristol Bay, May 3, 1940. That thereupon the matter was dropped by both parties, and nothing further was done between them with regard to the 1940 season. There were meetings between the parties for negotiation purposes. The evidence shows that the negotiations were carried on in a friendly manner. The Appellants were ready, able and willing to work in 1940 on the same wages and conditions that they enjoyed out of San Francisco in 1939. That Alaska Salmon Company would not have

operated in 1940 even if an agreement had been reached with the Union. That the Alaska Packers were going to curtail their operations and employment at Bristol Bay one-third on account of the Government ordered curtailment in fishing.

We submit that these facts do not show a "labor dispute" *within the meaning of the Act*.

B. The conclusion that there was an "active" labor dispute is not supported by the evidence.

It has been fully stated hereinabove that if there was a dispute, it was not in active progress at Karluk after April 10, 1940; nor at Chignik after April 12, 1940; nor at Bristol Bay after May 3, 1940. So Referee Roden found, and the evidence and reason support that finding and the Commission does not examine nor dispute this finding. The Commission merely lays down an unsupported conclusion and fiat that a dispute was in "active" progress.

The Act provides that a labor dispute, to disqualify an applicant, must be in active progress with respect to "any week" for which the applicant is disqualified. In other words, if there is a dispute in existence for one week, that disqualifies the applicant only for that one week, but not thereafter. Therefore, if there was a dispute, it ended at Karluk on April 10, 1940, and at Chignik on April 12, 1940, and Appellants last employed in 1939 in plants at those areas are not disqualified after those dates that the dispute was not in "active" progress.

With regard to Bristol Bay, the dispute ended on May 3, 1940, two days before the season opened.

Appellants would not be entitled to benefits until the season opened on May 5, and at that time there was no dispute in active progress. The dispute was then a thing of the past. Therefore, there is *no* disqualification with regard to the employees who were last employed in 1939 in Bristol Bay.

Furthermore, an "active" labor dispute, means a going operation which is *interrupted* by such dispute. It is admitted that there was neither strike nor picket line or going operation here, nor could there be, because the workers never started to work in 1940; there was no job to strike; no employer-employee relationship to terminate. Therefore, there was no labor dispute in "active" progress. A dispute in active progress would mean that there would be a way to end it, and therefore if the workers started it (thereby disqualifying themselves) they could end it (thereby removing the disqualification). But here, the Employers abandoned the season on their "deadline" dates, and that was all there was to the 1940 season so far as these Appellants are concerned.

C. The conclusion that the dispute "continued" is contrary to the evidence.

It has already been adequately set out herein that the dispute (if there was one) ended on the dates the Employers abandoned their respective operations, and that the dispute became a dead letter on those dates. The Commission's conclusion that the dispute "continued" could mean that the dispute continued indefinitely and in fact still continues. That conclusion,

or any conclusion that the dispute continued after the dates set out hereinabove, is contrary to the evidence.

D. The decision is in error in that there is neither finding nor conclusion that Appellants' unemployment during the 1940 salmon canning season was "due" to a labor dispute in active progress at the premises where last employed (which means at the conclusion of the 1939 season), and not "due" to other causes.

The Commission merely found a "labor dispute" and disqualified Appellants. The Commission does not consider whether Appellants were unemployed at Alaska Packers because of the curtailment. It is admitted tht this company, if it operated during 1940, was going to hire one-third fewer workers than in 1939, at least at Bristol Bay operations.

It is admitted that Alaska Salmon Company would not have operated in 1940 even had an agreement with the Union been signed. Therefore, it would follow that the employees of Alaska Packers (at Bristol Bay) and Alaska Salmon would not be disqualified in any event because their unemployment would not be "due" to a labor dispute. Insofar as it would be difficult to determine which one-third of the employees last employed by Alaska Packers at Bristol Bay would be unemployed during 1940 because of the curtailment, the doubt must be resolved in favor of the Appellants, because the Act is remedial in nature and therefore must be liberally construed so as to pay, and not to deny benefits, and therefore all Appellants so employed in 1939 should not be subject to any "labor dispute" disqualification.

Finally, Appellants' unemployment is "due" to the seasonal lay-off; that is, Appellants became unemployed when the 1939 season ended, and never became re-employed for 1940. Therefore, their unemployment is *due* to the *seasonal nature* of their work, and not to any alleged labor dispute.

4. *The findings of fact made by the Commission compel a decision contrary to the one rendered.*

The findings show that the Employers cancelled the 1939 contract, and that negotiations occurred between the parties, but that the parties did not arrive at a 1940 agreement. Therefore, it appears that had not the Employers cancelled the 1939 contract, operations would have taken place during 1940 on the basis of the 1939 contract which would have continued in existence. Therefore, the onus falls on the Employers because it was their affirmative action which started the "dispute" and Appellants are unemployed not through their own fault but because of the Employers' actions in attempting to undercut 1939 wages and conditions.

Nor do the findings of fact establish any labor dispute. They only show negotiations which were not consummated by agreement. They show no strike, no walk-out, no picket line, no presently existing employer-employee relationship terminated, in fact, no job to strike. It follows that the findings made, and the absence of other findings necessary to show a labor dispute, compel a decision that there was no labor dispute.

5. *The decision is contrary to law.*

A. The decision is wrong in holding that the facts in this case constitute a "labor dispute" within the meaning of the Act.

B. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act when the season opened, and that the dispute "continued".

C. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act after April 10, 1940 at Karluk, April 12, 1940 at Chignik, and after May 3, 1940 at Bristol Bay.

D. The decision is wrong in holding that Appellants' unemployment is "due" to a labor dispute.

The Commission has decided that where an employer cancels a collective bargaining agreement with a union and in its stead seeks to establish a contract giving lower wages and poorer conditions to the workers and the workers refuse to accept the same, as a result of which the employers abandon operations in a seasonal industry, work for the new season never having started, that this constitutes a "labor dispute in active progress" for the entire season of said seasonal industry within the meaning of the Act, and disqualifies the workers for benefits for a period of eight weeks as provided by the Act.

In Appellants' opinion, this is a plain misinterpretation of the Act, is contrary to the better reasoned

decisions on the subject of what constitutes a "labor dispute in active progress" within the meaning of the unemployment insurance laws, and violates the spirit and purpose of the Act. The facts in this case do not constitute a "labor dispute" within the meaning of the Act as a matter of law.

If the Commission's decision is allowed to stand it is an invitation to employers to cut wages (even though no basis exists or is offered) and if workers refuse to accept the cuts, then they also shall be denied unemployment benefits. The Act would thus operate to hurt rather than help workers as is its declared purpose.

XIII.

The opinion of the District Court of April 30, 1942, is contrary to law in that the statements, findings and conclusions therein stated are not supported by the evidence and is based upon an erroneous interpretation of the Alaska Unemployment Compensation Law and particularly upon an erroneous conception of what constitutes a "labor dispute" and what constitutes a labor dispute in "active progress" within the meaning of said law; that the errors in said opinion are substantially the same as those contained in the decision of the Commission and the specific assignments of error with respect to the Commission's findings and decision set forth in assignment of error No. XII are equally applicable to, and are adopted in full in the instant assignment of error.

SUMMARY OF ARGUMENT.

I.

The conclusions of law and decision of the District Court and the Commission are contrary to law, and to the evidence.

II.

The findings of fact of the District Court and of the Commission are not supported by the evidence, are contrary to the evidence, and both tribunals failed to make findings of fact required by the evidence.

ARGUMENT.

I.

THE CONCLUSIONS OF LAW AND DECISION OF THE DISTRICT COURT AND THE COMMISSION ARE CONTRARY TO LAW, AND TO THE EVIDENCE.

Assignments of error Nos. X, XI, XII, and XIII are covered by this point, and we refer to and adopt as argument in support of those assignments the reasons given with those assignments, as well as what we shall now say.

- A. The Act, being remedial in nature, is to be liberally construed and with a view toward awarding rather than denying benefits.**

This is true of all unemployment compensation acts. The rule is stated in

Danzer v. State Unem. Comm. of Oregon (Circ. Ct. Oregon, County of Multnomah), C.C.H. Oregon #8031:

“The general purposes of the statute should be kept in view in construing its provisions. This is distinctly a remedial statute. It is an old rule, and one of universal acceptance, that a remedial statute should be liberally construed so as to suppress the mischief and advance the remedy. * * * Exceptions or exemptions to such a remedial statute should be strictly construed. * * * Where * * * workmen suffered enforced unemployment, they should be entitled to benefits unless they clearly fall within an excepted class. * * * If the real cause of the closure be in doubt, that doubt, under the liberal rule in relation to remedial statutes, ought to be resolved in favor of the workmen for whose relief the statute was enacted.”

B. Before a claimant can be disqualified under Section 5(d) all of the following factors must be present:

It must appear with respect to *any week* for which it is contended a claimant is disqualified that during *such week*

1. There was a “*labor dispute*” in
2. “*Active progress*” at
3. The establishment or other premises at which claimant was “*last employed*”, and
4. That claimant’s unemployment is “*due*” to such dispute.

If *any one* of these *four elements* is lacking for *any week* during which a claimant is unemployed and claims benefits, he must be awarded benefits for that week. If there is *any doubt* on *any one* of these points, it *must be resolved in favor of claimant*.

C. There was no "labor dispute" within the meaning of Section 5(d).

Certainly there was a "dispute" between the Union and Employers over the terms of the 1940 contract, but it was not a "labor dispute" within the meaning of the Act. The term "labor dispute" means different things according to different acts in which it is used. In the Wagner Act and the Norris-LaGuardia Act it means what those acts define it to mean, and we agree with those definitions. But both of those acts, as this one, were enacted for the benefit of workers. The Wagner Act was passed to protect the right of collective bargaining and self-determination in the matter of employee representatives. The Norris-LaGuardia Act was passed to limit the issuance of injunctions against workers. Obviously a broad definition of "labor dispute" is appropriate in those acts.

The unemployment compensation acts were passed to allow benefits to workers who are unemployed because *there is no suitable employment available to them*. The "labor dispute" disqualification was inserted in the Act so that unemployment funds would not support a *strike or work stoppage* declared by workers. In other words, the State wanted to remain "impartial" during strike and stoppages. The eight weeks disqualification was imposed because statistics showed the average strike to last about that long. (See Referee's Decision, R. p. 638.) Generally, there is no "labor dispute" within the meaning of the unemployment compensation acts unless there is a strike or stoppage, or leaving of employment, or a presently

existing employer-employee relationship which is terminated as the result of some difference between the parties over wages, hours, conditions of work, representation, etc.

In our case, of course, there was no presently existing employer-employee relationship at the commencement of the 1940 season. That relationship was terminated by the closing of the 1939 season. All that occurred after the close of the 1939 season were negotiations between the Union and the Employers which did not culminate in a contract for 1940, and the Employers abandoned the 1940 season. These facts do not constitute a "labor dispute" under an employment compensation act.

Several decisions of unemployment commissions and courts in various states may be helpful on this point:

Pennsylvania Unemployment Commission Appeal, No. B-44-S-RA-372 (8-29-40), C.C.H. Pa. #8057.04.

Claimant was engaged at flat wage to prepare new vein of coal for contract work, during which time union and employer negotiated for contract rate on new vein. Agreement reached and claimant notified by union to stop work which he did. Claimant asked for other work which employer failed to furnish and claimant left work. Held: Claimant not disqualified account labor dispute. *Negotiations were amicable and no overt act was committed by either party. The bargaining did not constitute a labor dispute.* Claimant's unemployment is due to completion of contract job. (Our italics.)

So in our case, *the negotiations were not a labor dispute*, but were merely an attempt to get a contract for work which never started. Neither the negotiations, nor the failure to reach a contract, nor the ensuing abandonment of the 1940 season caused a labor dispute to occur where there was none. There was no overt act committed here. There was no strike. There was no job to strike. There was no stoppage and no leaving of employment. The Appellants just did not get employment for 1940. However the matter is viewed, there just was not a labor dispute within the meaning of the Act.

Graham v. State Unemployment Comm. of Oregon (Circ. Ct. Oregon, 4th Jud. Dist.), Sept. 2, 1940, C.C.H. Oregon #8030.

Claimants were members of C.I.O. who refused to join A.F.L. At insistence of A.F.L. employer discharged claimants when they refused to join A.F.L. Held: Not labor dispute within meaning of Unemployment Compensation Act.

If it be held that unemployment on account of a jurisdictional dispute as in the *Graham* case does not allow a labor dispute disqualification, that is persuasive authority to reject the disqualification in our case. Obviously, the Oregon Court allowed benefits because the men insisted on their right to belong to a union of their own choosing rather than switch unions and remain working. It is equally clear that the men could have remained at work if they had changed unions. The Court found that the Act could not be used to compel a man to belong to a union he did not want to join.

So in our case, the Act cannot be used to force men to work on Employer's conditions. If Appellants had accepted what was offered them, they could probably have worked. They refused to accept less than they enjoyed in 1939. It does not seem to us that a remedial statute can any more be used to depress wages and conditions, than it can be used to compel men to join a union not of their own choosing.

*United States Coal Co. v. Unemployment Comp.
Board of Review* (Ohio Court of Appeals),
Dec. 23, 1940, C.C.H. Ohio #8111.

Contract between company and union terminated by its terms, March 31, 1939 and work in mines ceased that day. Negotiations continued until contract reached May 12, 1939. Held: Benefits allowed between March 21-May 12, 1939. "Here there was no combined effort to stop work at a preconceived time. There was simply a conference attempting to work out an agreement between the interested parties. *The only contract between them had ended. No duty rested upon either the operators or the miners. The operators were under no obligation to keep the mines open. The miners were under no obligation to work. There was no contractual obligations.*" (Our italics.)

While it is true that the disqualification under the Ohio statute exists only where there is a "strike", the language used in the above decision is persuasive in our case. As in the miners' case, so in ours, there was no contract and no duty resolved on either party. There were just meetings to try to reach a contract. But in the absence of a duty on the part of Appellants to work, and since they declared no strike, left no

employment, and committed no overt act, we submit there was no labor dispute as contemplated by the Act.

Insofar as the District Court and Commission decided there was a "labor dispute" under the facts of our case, the decision is wrong in law.

(And insofar as the Referee found a "labor dispute" he, too, was wrong. Appellees claim and the Court and Commission found that Appellants are precluded from challenging any part of the Referee's decision since we did not appeal therefrom. We do not know any authority for such a finding. Since the Employers took an appeal, the entire case was opened before the Commission. To hold that an appeal on the Employers' part enables only them to challenge the Referee's findings, being one-sided, is palpably wrong and unjust. The whole case was opened when the appeal to the Commission was taken, and the whole case was open in the District Court and here.)

D. There was no labor dispute in "active progress" in this case.

Assuming for the sake of argument (but not admitting) that there was a "labor dispute", *we submit that it was not in "active progress" after April 10, 1940, at Karluk; after April 12, 1940, at Chignik; and after May 3, 1940, at Bristol Bay.* The dispute (if there was one) terminated on these dates with respect to each of those areas. The Referee's finding on this score is particularly eloquent and sound and we adopt his findings and argument (Referee's Decision, R. pp. 638-643):

“The crucial question is: Did the labor dispute continue after these dates and, if so, when did it terminate, if it became terminated at all?

A dispute, or other transaction, it would seem, continues in active progress when one or the other or both disputants, or parties to it, are active concerning it, not passive, when action is taken in relation to it and not when it is permitted to become dormant, for whatever may be the reason. In this case, nothing was done with the matters in dispute after the expiration of the respective dates mentioned, in fact there is a plain implication in announcing these dates that after their expiration no further efforts would be made to bring about an agreement and that the incident would be considered at an end, closed, and disposed of. And so it was treated by both parties. No action was taken by either of them to resume negotiations, no strike was called by the Union nor did the Employers declare a lockout. Both parties ceased from doing anything concerning the situation.

If, as claimed by counsel for the Employers, the dispute continued at least as long as the 1940 season, we may ask: When did it end? Why limit it to the 1940 season? If the Employers were to decide in 1941 not to operate because no agreement was reached in 1940, would not the dispute then be held to be in active progress during that season also and the men remain unemployed on that account and, under the argument of the Employers would continue to remain unemployed until the Employers decided to commence operations again. Like Banquo's ghost, or John Brown's soul, the dispute would walk or march until the Employers saw fit to lay it low.

The Employers called off the 1940 operations and thereby put an end to the negotiations and the dispute which had raged between them and the Union. The operations having been abandoned, what was there to dispute about? The matter had become a closed incident—'a dead Horse' as the man in the street would say.

In the brief of counsel, numerous references are given to definitions of what constitutes a labor dispute, but none is found dealing with the precise point under consideration and it is fair to say there is none.

Cases are found in the books where miners, in the Appalachian Fields, had contracts with their employers similar in some respect to those entered into between the Union and the Employers in this case and it has been held in Tennessee, which has disqualifying provisions like the one found in our act and now under consideration, that coal miners, during a cessation of activities, were deemed unemployed because of a labor dispute in active progress when the employer and the Union could arrive at no agreement within a period set aside for negotiations and the mines were shut down and remained shut down up to the time of the hearing and they were held disqualified for benefits on account thereof.

These cases are readily distinguishable from the case at bar. In the Miners' case the operations were not seasonal and the dispute was carried on and continued until the re-opening of the mines. In our case there was no possibility of a re-opening; the time to get ready to catch the fish which the Union was expected to put up had passed and the particular operation had on account thereof become impossible. There was here

no time for reconsideration; the die was cast and the Rubicon crossed; there was no possibility of turning back the clock. Preparations for the 1940 operations, if to be carried on at all, were unalterably set to begin at a definite time fixed by the Employers. After that time, they became impossible of performance. The time having expired without reaching an agreement, the operations were called off, the negotiations terminated and the active progress of the labor dispute which had raged for a couple of months came to an end.

It is my opinion that the labor dispute ceased to be in active progress with reference to the Karluk situation on April 10th—five days after the opening of the annual season there; it ceased to be in active progress at the Chignik plant on April 12th—twelve days after the opening of the season there and it ceased to be in progress with reference to operations in Bristol Bay May 3rd—two days before the opening of the season there, as fixed by Benefit Regulation 10 promulgated by the Alaska Unemployment Compensation Commission and that claimants became unemployed after those dates, not account of the existence of a labor dispute in active progress but because there was no employment to be had at these places and that a disqualification on account of the existence of a labor dispute in active progress, after the respective dates mentioned, is not justified under the facts as found and the law as I believe it to be. * * *

For the reasons hereinbefore stated, the Referee determines: * * *

Third: That at the time of the commencement of the season in Bristol Bay no labor dis-

pute was in active progress at any of the plants operated in that District in 1939.

It follows that: * * *

Fourth: That the claims filed by any of the 1939 Karluk and Chignik employees after the respective dates mentioned should be allowed; all of said claims to be subject to the statutory waiting period and other provisions of the Alaska Unemployment Compensation Law concerning eligibility to unemployment compensation of all or any of the claimants."

There are other unemployment cases which are persuasive authority leading to the conclusion that if there was a labor dispute in our case, it was not in "active progress". Some of these cases may be summarized as follows:

Graham v. Oregon, supra.

If there was labor dispute (which could hold there was not within meaning of Act), it was *not active* after employer acquiesced and laid off workers who refused to leave CIO and join AFL.

Indiana Unemployment Commission, Appeal Tribunal, No. 39-LD-51 (11-21-39) C.C.H. Ind. #8076.34.

Employees changed affiliation from X to Y union shortly before X union's contract with employer expired. Employer signed contract with Y union. X picketed and Y members prevented from working. Employer refused to negotiate with X because he had contract with Y. Held: Benefits allowed. "Where there is an impossibility of performance between the employer and

the X Union, the Appeal tribunal will not hold that there is a dispute in active progress. *The fundamental principal of a dispute presupposes a settlement*, but where the settlement is impossible, the Appeal tribunal will not permit such impossibility to bar benefits to unemployed individuals." (Our italics.)

So in our case, there was no way in which the Union could settle the dispute after the Employers abandoned the season. Since settlement was rendered impossible by the Employers' abandonment of the season, claimants became eligible for benefits at the time the impossibility arose.

Minnesota Appeal Tribunal Dec. Nos. 1190, 1287, etc. (5-21-40) C.C.H. Minn. #1980.06.

Employer operating in receivership, authorized by Federal Court to sell assets, which it did while strike was in progress at its premises. Employer thereupon ceased doing business in Minn.

Held: Benefits allowed. Dispute ceased date of court's order allowing sale of assets.

West Virginia Appeal Tribunal, Dec. No. AT-652 (8-30-39). Affirmed by Board of Review Dec. No. 155, C.C.H. West Va. #1980.03.

Claimants' disqualification account labor dispute held to terminate on reaching agreement, although plant did not reopen for 10 days thereafter in order to repair equipment.

So in our case, the ending of negotiations and the dropping of the matter by both parties, ended the

dispute (if there was one), and any disqualification which existed prior to that time was thereupon at an end.

The decision of the District Court and the Commission is wrong in law insofar as it found the dispute in active progress after April 10, 1940, at Karluk; after April 12, 1940, at Chignik; and after May 3, 1940, at Bristol Bay, and in reversing the Referee's decision in his findings and decision on this point.

E. There was no labor dispute in active progress at the "factory, establishment, or other premises" where appellants were last employed.

The last times Appellants worked at any of the Employers' plants was in 1939. When the 1939 season ended, Appellants ceased to be employees of Employers. Work never started at any of the Employers' Alaska plants during 1940. It follows that there was no labor dispute at the place of last employment.

F. Appellants' unemployment was not "due" to a labor dispute in active progress within the meaning of the Act.

Appellants' unemployment was "due" to the seasonal nature of the industry and to the fact that their employment ended at the close of the 1939 season.

Appellants never became re-employed for 1940. There was no guarantee that Appellants or any one of them would have had employment had a 1940 agreement been consummated.

It is admitted that Alaska Salmon Company called off its Bristol Bay season, and had other reasons

than a failure to reach an agreement with the union for so doing. (See Mr. Oliver's stipulations, R. p. 589, to the effect that Alaska Salmon would not operate during 1940 under any conditions, even if agreement was reached, after sending letter to Union under date of April 30, 1940, that this company had abandoned its 1940 operation.) *It follows unquestionably that all workers employed in Alaska by Alaska Salmon in 1939 are entitled to benefits.* Any doubt as to the reason for unemployment must be resolved in favor of Appellants, and if other reasons than a labor dispute contributed to the unemployment, benefits must be paid. Therefore these Appellants must be paid.

Danzer v. Oregon, supra.

There was evidence that Alaska Packers would have employed one-third fewer men for 1940 on account of the curtailment. Inasmuch as it cannot be determined which one-third of the Alaska Packers' 1939 Bristol Bay employees would not be employed during 1940, had there been an operation in that area, the doubt must be resolved in favor of all who were employed there in 1939, thereby qualifying all of them for benefits under the rule of the *Danzer case*.

Some of the decided cases by various unemployment commissions that employment must be "due" to a labor dispute before disqualification attaches are as follows:

Danzer v. Oregon, supra.

Where there was evidence that closing of plants was due as well to belief by operators that de-

creased production was necessary to improve the market as to labor dispute, doubt resolved in favor of claimants and labor dispute disqualification disallowed.

Indiana Appeal Tribunal, No. 39-LD-6, 7, 9, 10, 11 C.C.H. Ind. #8066.06.

Worker laid off for lack of work prior to labor dispute. Held: Unemployment not due to labor dispute, even though worker is member of union and participated in dispute.

Same situation and ruling as in above case in following:

Indiana Appeal Tribunal No. 39-LD-61 C.C.H. Ind. #8076.40;

Indiana Appeal Tribunal No. 40-A-198 and other cases. C.C.H. Ind. #8088.15;

Iowa Appeal Tribunal Dec. No. 39A-614-CM C.C.H. Iowa #8050.06;

Kansas Unemployment Comp. Comm. Dec. No. 28 C.C.H. Kansas #8058.10;

North Dakota Unemp. Comp. Comm. App. No. 10 C.C.H. No. Dak. #8042.20;

Oklahoma Comp. Comm. Board of Review Dec. No. 51-AT-40, C.C.H. Okla. #1980.01;

Michigan Unemployment Comm. Ref. Dec. No. 2927, C.C.H. Mich. #8067.12;

Michigan Unemployment Comm. Ref. Dec. No. 3069, C.C.H. Mich. #8067.12;

Minnesota Appeal Tribunal Dec. 845, C.C.H. Minn. #1980.08;

Massachusetts Unemp. Comp. Comm. Dec. No. 1358 Mass. A. C.C.H. Mass. #9108.02.

The following case is in point in our situation:

Michigan Unemp. Comp. Comm. Ref. Dec. No. 1589, C.C.H. Mich. #8049.06:

Employer operates cooperative mine. All employees laid off at end of season. Immediately after seasonal lay-off employer became involved in labor dispute. Held: *Unemployment is due to seasonal lay-off, and not labor dispute regarding renewal of union contract which was to govern future.* (Our italics.)

Thus it will be noted that the unemployment commissions of the various states uniformly follow the rule that where there is a lay-off for lack of work or a season ending, even though the employer thereafter becomes involved in a labor dispute which prevents work resuming, *the unemployment is found to be due to the lay-off or season ending, and not the labor dispute, and benefits are paid accordingly.*

We conclude that the District Court and the Commission made an error in law in deciding that the unemployment of claimants was due to a labor dispute, rather than the seasonal lay-off. So also was the Referee in error in this point.

G. The conclusions of law and decision are not supported by the findings of fact.

See Assignment of Errors, No. XII, 2.

H. The conclusions of law and decision are not supported by the evidence.

See Assignment of Errors, No. XII, 3.

- I. The findings of fact made by the Commission compel a decision contrary to the one rendered.**

See Assignment of Errors, No. XII, 4.

- J. The decision is contrary to law.**

See Assignment of Errors, No. XII, 5.

II.

THE FINDINGS OF FACT OF THE DISTRICT COURT AND OF THE COMMISSION ARE NOT SUPPORTED BY THE EVIDENCE, ARE CONTRARY TO THE EVIDENCE, AND BOTH TRIBUNALS FAILED TO MAKE FINDINGS OF FACT REQUIRED BY THE EVIDENCE.

Section 6(i) of the Act provides: "The findings of the Commission as to the facts, *if supported by the evidence*, * * * shall be conclusive * * *."

Thus it is clear that if the findings are *not* supported by the evidence, those findings shall be set aside and the District Court make its own findings. It also follows that if the Commission *fails* to make findings required by the evidence and necessary to a proper determination of the case, the District Court may make such findings as the evidence requires.

- A. Appellants contend that certain findings of fact made by the District Court and Commission are not supported by the evidence.**

Our contentions and argument on this point are set out in our Assignments of Error Nos. I, IX, XII-1 and therefore will not be repeated here.

- B. The evidence and a proper consideration of the case requires findings of fact on matters which the District Court and Commission ignored.

See the Assignments of Error No. VII.

CONCLUSION.

For the reasons stated and authorities cited in this Brief, Appellants respectfully submit that the decision of the District Court should be reversed and that Appellants should be paid full benefits for their unemployment during the 1940 Alaska salmon season, and that at the very least the Referee's decision should be restored and given effect.

Dated, San Francisco,
February 4, 1944.

Respectfully submitted,

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Attorneys for Appellants.

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK L. ARAGON, and other Applicants,
Members of Alaska Cannery Workers
Union Local No. 5, and ALASKA CAN-
NERY WORKERS UNION LOCAL No. 5, on
behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMIS-
SION OF THE TERRITORY OF ALASKA;
NOBLE DICK, R. E. HARDCASTLE and
R. S. BRAGAW, as members of and con-
stituting said Commission; and ALASKA
PACKERS ASSOCIATION, a corporation;
ALASKA SALMON COMPANY, a corpora-
tion, and RED SALMON CANNING COM-
PANY, a corporation,

Appellees.

BRIEF FOR APPELLEES ALASKA PACKERS ASSOCIATION, ALASKA SALMON COMPANY AND RED SALMON CANNING COMPANY.

FILED

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PANY, a corporation,

Appellees.

**BRIEF FOR APPELLEES ALASKA PACKERS
ASSOCIATION, ALASKA SALMON COMPANY
AND RED SALMON CANNING COMPANY.**

STATEMENT AS TO JURISDICTION

This is an appeal from a judgment of the Alaska Dis-
trict Court, affirming a decision of the Alaska Unemploy-
ment Compensation Commission which denied in part

appellants' claims for benefits under the Alaska Unemployment Compensation Law.

Appellee, the Unemployment Compensation Commission of Alaska, is represented in this court by its own counsel. This brief is filed on behalf of the employers, Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, who will hereinafter be referred to as "employers".

The cause originated before the Commission on claims for unemployment benefits filed by appellants. The Commission held appellants disqualified for benefits for the statutory period of eight weeks¹ because their unemployment was due to a labor dispute (R. 608-609). On appeal the matter was heard before a referee who took testimony and held that a labor dispute existed up to certain dates but did not continue through the season. Accordingly he held appellants entitled to benefits from the dates he determined the dispute terminated (R. 608-643). The employers appealed to the full Commission. The Commission affirmed its initial determination (R. 644-649). Appellants petitioned for review in the District Court

¹Section 5(d) of the Alaska Unemployment Compensation Law provides:

"Disqualification for Benefits. An individual shall be disqualified for benefits:

* * * * *

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute: * * *."

Other pertinent provisions of the Alaska Act are copied in the appendix to this brief.

(R. 650-672). That court affirmed the decision of the Commission,² and this appeal followed.

This court has jurisdiction of the appeal under the provisions of section 128 of the Judicial Code (28 U.S.C. §225).

STATEMENT OF THE CASE.

Employers own and have for many years operated salmon canneries in Alaska. Operations are carried on at three separate places—Chignik, Karluk and Bristol Bay (R. 712). Alaska Packers has plants at all three locations; Alaska Salmon and Red Salmon have plants only at Bristol Bay (R. 338-339, 559, 575). The operations are seasonal. At Chignik the season in 1940 was from April 1 to September 10; at Karluk, from April 5 to September 25; and at Bristol Bay, from May 5 to August 25.

Appellants, over 1300 in number, were salmon cannery workers employed by employers during the 1939 season (R. 31, 541-542, 598-605). Customarily such workers were hired in San Francisco each year to be sent to Alaska (R. 122-126, 713).

In 1939, as had been the practice for several seasons, employers entered into an agreement at San Francisco with appellant union (hereinafter referred to as the "Union") for the employment of men in the 1939 operations (R. 714). Shortly after the 1939 season this agree-

²Decree, R. 719-720; Findings of Fact and Conclusions of Law, R. 711-718; Opinion, R. 692-710.

ment was terminated (R. 266-268, 610, 714), and correspondence was exchanged looking toward the negotiation and execution of an agreement covering the terms and conditions of employment of cannery workers for the 1940 season (R. 165, 262-263, 610, 714).

In the meantime, early in 1940, employers had formed a corporation known as Alaska Salmon Industry, Inc., to handle labor relations and labor negotiations of the Alaska salmon industry on the Pacific Coast (R. 260-261). This corporation, on behalf of employers, promptly notified the Union of its readiness to negotiate for the 1940 season (R. 262-263), and early in March appointments were made to commence negotiations (R. 272).

Controversy immediately arose. The Union submitted a proposed agreement for the 1940 season with demands for increased wages and for other conditions more favorable than those provided in the 1939 agreement (R. 317, 275, et seq.). The employers, however, had suffered losses on the operations of the preceding year under the wage scales provided in the 1939 agreement, and, in addition, were faced in 1940 with a curtailed and difficult season (R. 146, 152, 244, 572-573). Accordingly, they proposed reductions (R. 243).

A series of conferences was held during March (R. 330-331, 620-621). On April 1st the Union notified the employers that it was withdrawing from negotiations in San Francisco and that negotiations as to the 1940 agreement for San Francisco would be completed by the representatives of the Union in Seattle, where negotiations for a coastwise contract with the industry were being carried

on (R. 320-322). The employers promptly arranged to continue negotiations at Seattle (R. 339) and so advised the Union (R. 333). At the same time, the Union requested that certain questions other than wages be taken up in San Francisco, and discussion of these questions continued (R. 321-322).

In the meantime, the employers expended hundreds of thousands of dollars preparing for the season; ships were withheld from profitable charters and put in readiness to leave; cans, fishing gear, trucks, lumber and all other manner of equipment and supplies were acquired; all was in readiness, except the reaching of labor agreements (R. 530-536, 560-565).

As above pointed out, the fishing and canning season in Alaska is seasonal—at Chignik the season opened April 1; at Karluk, April 5—and the time was approaching when the expeditions would have to leave, if at all. On April 3 the employers notified the Union that if operations were to be carried on Karluk, it would be necessary to reach an agreement on or before April 10th; and if operations were to be carried on Chignik, it would be necessary to reach an agreement on or before April 12th. These dates were the “latest possible time that can be set,” with no leeway for “unfavorable factors of weather, break down, etc.” (R. 326). At the same time the employers submitted definite proposals relating to wages and other working conditions (R. 333, et seq.). On April 8th all of these proposals were rejected and charges of bad faith were made against the employers (R. 343, 623-625). On the same day, upon receipt of this notice,

the employers again notified the Union that they were willing to continue negotiations (R. 344-346), and the following day, as the Karluk deadline approached, the employers delivered a further letter to the Union reviewing the situation and pointing out that the companies were "desirous of operating under fair conditions, comparable with those established in competitive and allied industries, but we are unable to operate if you will not grant to us the same conditions that you have granted to other such employers" (R. 351).

The next day, April 10th, was the deadline for Karluk operations. In a final effort to end the dispute, the employers proposed a memorandum agreement under which the terms of the contract being negotiated at Seattle would be applicable to the Karluk operations (R. 355). Communications were exchanged and meetings were held through the day and evening. The Union, however, finally refused to sign (R. 358-363), and the Karluk deadline came and passed.

During the next two days negotiations continued as to Chignik (R. 364-372). Again the employers sought to obtain a last-minute memorandum agreement (R. 365-366), but the Union refused, charging the employers with bad faith and a "recalcitrant and arbitrary attitude" (R. 256-259). No agreement was reached and the last possible sailing date for Chignik operations also went by (R. 364-373).

At the Union hall notices were posted that if members did not obtain employment, applications for unemployment compensation could be filed (R. 599), and the dispute continued. The Union at all times took the position

that it must have the 1939 San Francisco wage scale or better (R. 506-507); the employers, that they were willing to accept the same terms as were agreed upon in Seattle for the rest of the industry, but simply could not continue to operate at a competitive disadvantage with its accompanying losses (R. 572-574).

Further meetings were held in an effort to agree on terms for work at the one remaining operation—Bristol Bay (R. 372-377). On April 26th the employers notified the men that appellee Alaska Salmon Company had abandoned its operations for 1940, and that Alaska Packers and Red Salmon Company would be compelled to abandon their operations unless agreements could be reached on or before midnight, May 3rd (R. 378-380), “the latest possible day from San Francisco without allowing a safety factor” (R. 521-522). The next day the employers again offered to sign a memorandum agreement under which the terms of the Seattle contract would be applicable to any expeditions from San Francisco (R. 381), but the Union adhered to its position that it would accept from the San Francisco operators nothing less than the 1939 San Francisco agreement (R. 244). As the deadline approached further communications were sent by the employers urging that negotiations be concluded (R. 382-393c); numerous meetings were held; definite and unqualified written proposals were made by the employers (R. 393e, 395-491); federal officials offered their services in an attempt to bring about an agreement and participated in last-minute meetings (R. 236, 499-502). The dispute continued, however, and the last possible sailing for Bristol Bay also came and passed.

The nature of the entire dispute may be summed up by quoting the testimony of one of the employers (R. 572-573):

“The main thing, we were losing money for several years and felt that couldn’t go on, not only for our own protection but for the entire industry and the workers. We felt we were being forced to operate at a disadvantage over the Seattle operators and we had to sell our pack in competition with them. * * * broadly speaking we insisted that we had to have some [reduction] because we had not been able to make any profit over several years.”

and the testimony of one of the representatives of the employees (R. 243-244):

“A general policy was established and formed at the very first meeting there has got to be substantial cuts. And that is the score!

Q. Did they explain why they wanted substantial cuts?

A. Yes. Said they was not making any dough.

Q. And they said they wanted substantial cuts? Took that position throughout the negotiations?

A. That is correct.

* * * * *

Q. It is a fact, isn’t it—I think you have already testified to this—all the unions were told that the employers weren’t making any money and that they wanted reductions from the 1939 agreement?

A. That is right.

Q. No offer was made by the union at any stage of the game for anything less than the 1939 agreement, was there?

A. They don’t! Unions are not in a practice of cutting down on gains that they have already got.”

Immediately after May 3, appellants filed claims for unemployment compensation insurance with the Alaska Commission. These claims were promptly denied upon the ground that appellants' unemployment was due to a labor dispute (R. 608-609). The Union appealed, requesting a hearing before a referee in San Francisco (R. 3-5). This request was granted and extensive hearings were held at which evidence was submitted on behalf of both appellants and the employers (R. 25-608). The referee found that "There is no evidence to support the Union's contention that the Employers acted in bad faith in the course of the negotiations" (R. 628); that "All operations contemplated by the Employers and the Union for 1940 were abandoned for the reason that a mutually satisfactory working agreement was not negotiated by the dates set by the Employers, as the 'deadline' for the respective districts" (R. 633); that "A fair consideration of all the evidence submitted leaves no escape from the conclusion that a labor dispute existed and was in active progress between the Employers and the Union up to the expiration of the dates fixed by the Employers for the consummation of the working agreements for the respective plants" (R. 638); but that "the labor dispute ceased to be in active progress," as to the three districts, upon the expiration of the respective "deadline dates," since, upon those dates "the dispute which had raged between [the Employers] and the Union" came to an end (R. 640). Accordingly, the referee ordered that compensation be denied from the opening of the season up to the respective deadline dates, but be allowed for the balance of the season (R. 642-643).

The employers appealed to the full Commission. The Commission held that a labor dispute existed and continued and that appellants' unemployment was due to that dispute. Compensation accordingly was allowed, to commence after the expiration of eight weeks (R. 644-649). The District Court affirmed this decision.⁹

ARGUMENT.

- I. THE QUESTION WHETHER APPELLANTS' UNEMPLOYMENT WAS DUE TO A LABOR DISPUTE IN PROGRESS AT EMPLOYERS' PLANTS IS A QUESTION OF FACT ON WHICH THE FINDING OF THE COMMISSION, BEING SUPPORTED BY SUBSTANTIAL EVIDENCE, IS CONCLUSIVE.**

Section 6(i) of the Alaska Unemployment Compensation Law provides:

"In any judicial proceeding under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said Court shall be confined to questions of law."

The District Court found "that there was complete absence of fraud, and, therefore, the findings of the Commission are conclusive" (R. 717). This finding is correct and undisputed.

⁹Opinion, R. 692-711; Findings of Fact, R. 711-717; Conclusions of Law, R. 717-718.

The Commission found (R. 648):

“That there was an active labor dispute existing between said parties at the opening of the season; that said dispute continued * * *”¹⁰

It further found, necessarily,¹¹ that appellants’ unemployment was due to this dispute.

The District Court found (R. 714-716):

“5. * * * there was a labor dispute between petitioners and claimants, the Union and its members, on the one side, and the respondent companies on the other side, and this labor dispute continued and was never settled but remained in progress as hereinafter set forth.

* * * * *

10. That the unemployment of claimants in the 1940 fishing and canning season, and the whole thereof, was due to [this] labor dispute.”

It is settled that these findings of the Commission, concurred in by the District Court, are findings of fact on which the finding of the Commission, if supported by substantial evidence, is conclusive.

“The first question before us is: Was the finding by the Commission that a labor dispute existed at

¹⁰This finding of the Commission is included in that part of its “Findings of Fact and Reasons for Decision” entitled “Conclusion and Decision”. It is well settled, however, that an erroneous designation of a finding of fact as a “conclusion” or “conclusion of law” does not change its effect.

Bogan v. Hynes (9th C.C.A. 1933) 65 F. (2d) 524, 526;
O’Keith v. Johnston (9th C.C.A. 1942) 129 F. (2d) 889, 890;

Baldwin Rubber Co. v. Paine & Williams Co. (6th C.C.A. 1938) 99 F. (2d) 1, 3;

O’Reilly v. Campbell (1886) 116 U.S. 418.

¹¹See *Labor Board v. Mackay Co.* (1938) 304 U.S. 333, 344, 349.

the Hampton Division, Pacific Mills, in Columbia, a finding of fact by the Commission that could not be disturbed by the Court on appeal? The answer to this question involves the determination of whether the Commission was justified in finding, as a matter of fact, that a labor dispute existed at that time and place.

* * * * *

This Court is of the opinion that the Commission had before it evidence which would justify its finding that the fact of a labor controversy or dispute was in active progress.

* * * * *

It is obvious, therefore, that it was not the intent of the Legislature to give the Courts the right to determine whether a labor dispute existed, for under Section 5 of the Act this right is patently given to the Commission, whose duty it is to determine by the testimony and the evidence in each case whether certain facts existed, among them, whether or not a labor dispute existed, as a matter of fact. Accordingly, in the instant case, the Commission has determined that a labor dispute did exist at the time and place under consideration, and has so declared by its findings; and by the express provisions of the Act, such findings are final, just as the findings of a petit jury on the facts are final. Neither the Circuit Court nor this Court can interfere with those findings.

* * * * *

Just as a labor dispute is a condition of fact under the statute, so is the issue as to whether the claimants' unemployment was directly due to it'' (*Johnson v. Pratt* (1942) 200 S. C. 315, 20 S.E. (2d) 865, 870-871).

“The finding of fact by the Court of Appeals that petitioner’s unemployment was the result of a ‘labor dispute’ in which he participated through his duly accredited agents is, as well understood and not here controverted, not subject to review by this Court” (*Ex parte Pesnell* (1940) 240 Ala. 457, 199 So. 726, cert. den., 313 U.S. 590).

The decisions of the Supreme Court of the United States furnish numerous precedents to the same effect.

Rochester Tel. Corp. v. U.S. (1939) 307 U.S. 125, involved section 2(b) of the Communications Act of 1934, which provides that the Federal Communications Commission shall not have jurisdiction over any carrier “engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carrier.” The Commission, after a hearing, determined that the Rochester Telephone Corporation was under the “control” of the New York Telephone Company and was, therefore, not entitled to classification as a mere connecting carrier under section 2(b). The Supreme Court held that this finding was one of fact, conclusive upon the court if supported by substantial evidence (pp. 145-146):

“The record amply justified the Communications Commission in making such findings. Investing the Commission with the duty of ascertaining ‘control’ of one company by another, Congress did not imply artificial tests of control. This is an issue of fact to be determined by the special circumstances of each

case. So long as there is warrant in the record for the judgment of the expert body it must stand. The suggestion that the refusal to regard the New York ownership of only one third of the common stock of the Rochester as conclusive of the former's lack of control of the latter should invalidate the Commission's finding, disregards actualities in such intercorporate relations. Having found that the record permitted the Commission to draw the conclusion that it did, a court travels beyond its province to express concurrence therewith as an original question. 'The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.' "

South Chicago Co. v. Bassett (1940) 309 U.S. 251, involved comparable provisions of the Longshoremen's and Harbor Workers' Compensation Act. Section 3 of that Act provides that no compensation shall be payable in respect of the disability or death of a "master or member of a crew of any vessel." The deputy commissioner determined that the employee in question was performing services on the vessel as a laborer, and not as a member of the crew. The Supreme Court held that this finding was one of fact, binding upon the courts (pp. 257-258):

"So far as the decision that this employee, who was at work on this vessel in navigable waters when he sustained his injuries, was or was not 'a member of a crew' turns on questions of fact, the authority to determine such questions has been confided by Congress to the deputy commissioner. Hence the Court of Appeals correctly ruled that his finding, if there was evidence to support it, was conclusive and

that it was the duty of the District Court to ascertain whether it was so supported and, if so, to give it effect without attempting a retrial. * * *

Petitioners urge that the question whether the decedent was a member of a 'crew' was a question of law. That is, that upon the undisputed facts the decedent must be held as a matter of law to have been a member of a 'crew' as distinguished from a longshoreman or laborer at work upon the vessel. We are unable so to conclude.

The word 'crew' does not have an absolutely unvarying legal significance."

Similarly in

Parker v. Motor Boat Sales (1941) 314 U.S. 244,
246,

and

Voehl v. Indemnity Ins. Co. (1933) 288 U.S. 162,

the court held that a finding by the deputy commissioner that an employee was acting "in the course of his employment" within the meaning of the Longshoremen's and Harbor Workers' Compensation Act was a finding of fact, conclusive upon the court if supported by substantial evidence. To the same effect see:

National Labor Relations Board v. Hearst Publications (1944) U.S., 64 S. Ct. 851, 860-861;

Dobson v. Commissioner (1943) 320 U.S. 489;

Labor Board v. Mackay Co. (1938) 304 U.S. 333,
344, 349;

Pacific G. & E. Co. v. Industrial Acc. Com. (1919)
180 Cal. 497, 499, 181 Pac. 788, 789.

It follows that the only question open on this appeal is whether there is substantial evidence to support the finding of the Commission, concurred in by the District Court, that appellants' unemployment was due to a labor dispute in progress at the employers' plant.

All four tribunals below concurred in a finding that a labor dispute existed—"raged" (R. 640)—between the employers and appellants, and the evidence already summarized above (*supra*, pp. 3-8), clearly supports this finding. Of these four tribunals only the referee expressed the view that the dispute terminated when the 1940 operations were abandoned. The Commission's contrary finding is manifestly correct. Other evidence aside, support for this finding appears in the evidence concerning the negotiations between appellant Union and the industry subsequent to the abandonment of the San Francisco operations. These subsequent negotiations in Seattle finally resulted in an agreement as to operations out of Portland and Seattle, but with the express exception that if any operation "was attempted out of San Francisco * * * a separate contract would have to be negotiated for San Francisco operations" (R. 503). In other words, the dispute as to the operations manned by San Francisco employees was still very much "in active progress."

Beyond this, all of the other evidence is consistent only with the finding that the dispute was in active progress. The employers intended to operate, and would have operated, their plants in Alaska at all three locations. They offered appellants work. Appellants through their col-

lective bargaining agents demanded higher wages and other terms of employment more favorable than the employers in good faith felt they could accept. Finally, appellants concertedly refused to work upon the conditions offered. Far from terminating on the date of this impasse, the dispute at that time ripened into open disagreement which continued through the season.

The most that can be said for appellants' contention is that the terms of the statute, "due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he was last employed" must be held as an absolute matter of law to mean that the dispute must be continually carried on by active disputation between the parties during the period for which compensation is sought. Obviously, such an application of the terms of the statute does violence to its meaning. Such an application would result in employees being entitled to benefits unless both parties continue their disputation by daily or periodic meetings at which either or both deliberately leave open the door for further suggestions or offers. Any ultimatum given at any stage would justify the contention that the "dispute" as such had ended and that subsequent efforts of the parties to get together were meaningless because the giving of the ultimatum, plus the maintenance of this position, resulted in the termination of the dispute as of the ultimatum's date. Take the supposititious case where the employer gives a wage ultimatum to a Union and the employees strike but subsequently go back to work at the wage rate proposed by the employer. Can it be said that the dispute is not in active progress after the date of the

ultimatum simply because the employer refused to consider any other proposal? The only fair and reasonable application to be made of the terms employed in the statute is to deny unemployment benefits to employees where their unemployment is due to a labor dispute directly applying to the plant or factory where the employees are or were last employed. In other words, the dispute must (a) be in active progress in the sense that it has not been settled so as to permit employment, and (b) it must pertain directly to the factory or plant in which the employee is or was employed. Such a clear and reasonable application of the terms of the statute was chosen as the correct one both by the Commission and by the District Court.

Appellants also suggest that their unemployment was not "due" to the labor dispute, but, as to Alaska Salmon Company, to the fact that that company called off its operations for reasons other than the failure to reach an agreement with the employees, and, as to all three companies, to the fact that the 1939 season had ended: that is to say, that their unemployment was due to the seasonal lay-off in 1939 (App. Br. pp. 39-42).

These contentions are without support in the record. Appellants were, of course, laid off at the end of the 1939 season, but their unemployment in 1940 was due entirely to the dispute concerning wages and other working conditions for that season. As to Alaska Salmon's operations, both the Commission and the District Court found that the unemployment at this company's plants, like that at the plants of Alaska Packers and Red Salmon,

was due to the labor dispute. This finding has direct support in the evidence.¹²

¹²R. 523, 525, 587-588.

Appellants say, "It is admitted that Alaska Salmon Company called off its Bristol Bay season, and had other reasons than a failure to reach an agreement with the Union for so doing * * * *It follows unquestionably that all workers employed in Alaska by Alaska Salmon in 1939 are entitled to benefits.*" (App. Br. pp. 39-40.) This statement is incorrect. Alaska Salmon, it is true, had financial troubles which were due, among other things, to the losses suffered the previous season because of excessive labor costs (R. 525). Accordingly, counsel for this company stipulated that the reason Alaska Salmon did not operate was "not due solely and only to the existence of an alleged labor dispute" (R. 588). But this stipulation was distinctly qualified as follows (R. 588):

"Referee Roden. Can't you go a little farther than that? The real cause was the fact that the Alaska Salmon Company was, well, financially embarrassed so it could not have operated even though an agreement had been reached between it and its proposed employees?

Mr. Oliver. No, because that is not the case."

Direct evidence in the record supports the finding of the Commission that Alaska Salmon, as well as the other two companies, would have operated if satisfactory agreements with labor could have been consummated:

"Q. Was there anything to indicate that so far as the Alaska Packers Association was concerned or the Red Salmon Canning Company was concerned or the Alaska Salmon Company prior to the date with regard to them that you have mentioned that they did not intend to go fishing and would go fishing and could go to Alaska with an expedition from San Francisco in the event a proper labor arrangement could be made with the unions involved?

A. Every evidence that I had in addition to the statements that the operators, themselves, made to me which, I believed indicated a desire to go fishing and, indeed, had made partial preparations to complete their expeditions. There were some monies expended, equipment purchased, nets bought, cans purchased. There were some supplies and machinery purchased beyond that in preparation for the season of 1940, and those expenditures amounted to many thousands of dollars, in anticipation of an actual operation in 1940. The ships in addition that I have mentioned that were to be used for those expeditions were not chartered, although attractive charters were available" (Testimony of Paul St. Sure, R. 523).

II. THE DECISION OF THE COMMISSION AND OF THE COURT BELOW IS IN ACCORD WITH ALL OTHER DECISIONS UNDER COMPARABLE STATUTES.

The contentions made by appellants in this court are the same as those made below. These are answered—one and all—in the opinion of the District Court (R. 700-710), and decisions under comparable statutes are cited to sustain the conclusions reached by that court and by the Commission. Without repeating what is there said, we simply add the following citations to those made in the District Court's opinion:

Dallas Fuel Co. v. Horne (1941) 230 Iowa 1148, 300 N.W. 303;

Walter Bledsoe Coal Co. v. Review Board, Etc. (Ind. Sup. Ct., 1943) 46 N.E. (2d) 477;

Sandoval v. Industrial Commission (1942) 110 Colo. 108, 130 P. (2d) 930;

In re North River Logging Co. (1942) 15 Wash. (2d) 204, 130 P. (2d) 64;

Johnson v. Pratt (1942) 200 S.C. 315, 20 S.E. (2d) 865;

Moore Et Al. v. Board of Review (C.C., W. Va., 1940) C.C.H. Unemployment Insurance Service (W. Va.), par. 1980.01;

New Jersey Board of Review Decision No. BR-52L, C.C.H. Unemployment Insurance Service (N.J.), par. 1980.03;

Pennsylvania Board of Review Decision No. B-44-6-RG-503, C.C.H. Unemployment Insurance Service (Pa.), pars. 1980.013, 1980.019.

These cases and those cited by the District Court, namely:

Miners in General Group v. Hix (W. Va. Sup. Ct., 1941) 17 S.E. (2d) 810;

Department of Industrial Relations v. Pesnell (1940) 29 Ala. App. 528, 199 So. 720;

Ex parte Pesnell (1941) 240 Ala. 457, 199 So. 726 (cert. den., 313 U.S. 590);

Barnes v. Hall (1941) 285 Ky. 160, 146 S.W. (2d) 929;

Block Coal & Coke Co. v. United Mine Workers, Etc. (1941) 177 Tenn. 364, 148 S.W. (2d) 364;

Deshler Broom Factory v. Kinney (1942) 140 Neb. 889, 2 N.W. (2d) 332;

Latham v. State Unemployment Compensation Com'n (1941) 167 Ore. 371, 117 P. (2d) 971;¹³

answer each of appellants' contentions and support in every particular the decision of the court below. We know of no contrary authorities and appellants have found none to cite.

III. COMMENT ON APPELLANTS' AUTHORITIES.

The only court case cited by appellants is *United States v. Co. v. Unemployment C. Bd. of Review* (1940) 66 Ohio App. 329, 32 N.E. (2d) 763.¹⁴ That case arose under a

¹³Erroneously cited by the District Court as 117 P. (2d) 97 (R. 10).

¹⁴At the time appellants' brief was prepared this case appeared in C.C.H. Unemployment Insurance Service (Ohio) in par. 8111, and is so cited by appellants (App. Br. p. 32). The only report of the case now appearing in this service is a summary in paragraph 1980.013.

statute which provides for disqualification only in case of a strike.

The list of state unemployment commission rulings, cited at pages 40-42 of appellants' brief, goes only to a point which is not in dispute, namely, that disqualification for benefits comes only where unemployment is "due" to a labor dispute. The finding here is that the unemployment was due to a labor dispute—not to the ending of the previous fishing season or to any other cause—and this finding is overwhelmingly supported in the evidence. Other commission rulings cited in appellants' brief are manifestly not in point.

Wherever the questions involved in this case have arisen, they have been decided as they were by the Commission and by the court below. To illustrate, we refer to appellants' citation of three Indiana Commission rulings, these citations being to the C.C.H. Service where no sufficient statement is given to show the point involved.¹⁵ In contrast, one of the cases cited by the District Court was from the Supreme Court of Indiana, where, in a similar situation arising under a similar statute, the court said (*Walter Bledsoe Coal Co. v. Review Board, Etc.*, 46 N.E. (2d) 477, 479):

"It must be concluded that the purpose of the act was to provide benefits to those who were involuntarily out of employment, and not to finance those who were willingly and deliberately refusing to work because of a failure of their employers to accede to demands for higher wages."

¹⁵App. Br. pp. 37, 41.

CONCLUSION.

We respectfully submit that the judgment of the District Court is correct and should be affirmed.

Dated, San Francisco, California,
June 1, 1944.

Respectfully submitted,

MARSHALL P. MADISON,

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*Alaska Packers Association, Alaska Salmon Com-
pany and Red Salmon Canning Company.*

(Appendix Follows.)

Appendix

ALASKA UNEMPLOYMENT COMPENSATION LAW.

(Chapter 4, Extraordinary Session Laws of 1937,
as amended by Chapters 1 and 51, Session Laws, 1939)

Be it enacted by the Legislature of the Territory of
Alaska:

DECLARATION OF TERRITORIAL PUBLIC POLICY. As a guide
to the interpretation and application of this Act, the
public policy of this Territory is declared to be as follows:

Economic insecurity due to unemployment is a serious
menace to the health, morals and welfare of the people
of this Territory. Involuntary unemployment is therefore
a subject of general interest and concern which requires
appropriate action by the Legislature to prevent its spread
and to lighten its burden which now so often falls with
crushing force upon the unemployed worker and his
family. The achievement of social security requires pro-
tection against this greatest hazard of our economic life.
This can be accomplished by encouraging employers to
provide more stable employment and by the systematic
accumulation of funds during periods of employment from
which benefits may be paid for periods of unemployment,
thus maintaining purchasing power and limiting the serious
social consequences of poor relief assistance. The Legis-
lature, therefore, declares that in its considered judgment
the public good, and the general welfare of the citizens
of this Territory, require the enactment of this measure,
under the police power of the Territory, for the compul-
sory setting aside of unemployment reserves to be used

for the benefit of persons unemployed through no fault of their own.

* * * * *

Section 5. DISQUALIFICATION FOR BENEFITS. An individual shall be disqualified for benefits:

* * * * *

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute;

* * * * *

Section 6. CLAIMS FOR BENEFITS.

* * * * *

(b) "Initial Determination." An examiner designated by the Commission shall take the claim. An initial determination thereon shall be made promptly and shall include a determination with respect to whether or not benefits are payable, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration of benefits. In any case in which the payment or denial of benefits will be determined by the provisions of section 5(d) of this Act, the examiner shall promptly transmit all the evidence with respect to that subsection to the Commission. The Commission, or such representative as it may designate for such purpose, shall, on the basis of the evidence so submitted and such additional evidence as it may require, make an initial determination with respect thereto. An initial determination may for good cause be reconsidered. * * * The claimant

or any party to the determination may file an appeal from such initial determination * * *.

(c) "Appeals." An appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall unless such appeal is withdrawn affirm or modify the findings of fact and initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of the section.

(d) "Appeal Tribunals." To hear and decide disputed claims, the Commission shall appoint one or more impartial appeal tribunals consisting in each case of a referee, selected in accordance with Section 11(d) of this Act. No person shall participate on behalf of the Commission in any case in which he is an interested party.

(e) "Commission." The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties of such decision to initiate further appeals before it. The Commission shall permit such further appeal by any of the parties to a decision of an appeal tribunal, and by the examiner whose decision has been overruled or modified by an appeal tribunal. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard

by a quorum thereof in accordance with the requirements of subsection (c) of this Section. The Commission shall promptly notify the parties to any proceedings of its findings and decisions.

* * * * *

(h) "Appeal to Courts." Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final thirty days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the Commission and designated by it for that purpose, or at the Commission's request by the Attorney General.

(i) "Court Review." Within thirty days after the decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such decision, in which action any other party to the proceeding before the Commission shall be made a defendant. * * * In any judicial proceeding under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. * * * An appeal may be taken from the decision of the United States District Court as is provided in civil cases.

No. 10,425

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK L. ARAGON and other Applicants,
members of Alaska Cannery Workers'
Union, Local No. 5, and ALASKA CANNERY
WORKERS' UNION, LOCAL No. 5, on behalf
of Applicants,

Appellants,

VS.

UNEMPLOYMENT COMPENSATION COMMISSION
OF THE TERRITORY OF ALASKA, NOBLE DICK,
R. E. HARDCASTLE and R. S. BRAGAW, as
members of and constituting said Com-
mission, and ALASKA PACKERS ASSOCIA-
TION (a corporation), ALASKA SALMON
COMPANY (a corporation), and RED
SALMON CANNING COMPANY (a corpora-
tion),

Appellees.

BRIEF FOR APPELLEES

**UNEMPLOYMENT COMPENSATION COMMISSION OF THE
TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE
AND R. S. BRAGAW, AS MEMBERS OF AND
CONSTITUTING SAID COMMISSION.**

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Commission.*

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No. 10,425

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK L. ARAGON and other Applicants,
members of Alaska Cannery Workers'
Union, Local No. 5, and ALASKA CANNERY
WORKERS' UNION, LOCAL No. 5, on behalf
of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION
OF THE TERRITORY OF ALASKA, NOBLE DICK,
R. E. HARDCASTLE and R. S. BRAGAW, as
members of and constituting said Com-
mission, and ALASKA PACKERS ASSOCIA-
TION (a corporation), ALASKA SALMON
COMPANY (a corporation), and RED
SALMON CANNING COMPANY (a corpora-
tion),

Appellees.

BRIEF FOR APPELLEES

UNEMPLOYMENT COMPENSATION COMMISSION OF THE
TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE
AND R. S. BRAGAW, AS MEMBERS OF AND
CONSTITUTING SAID COMMISSION.

(NOTE) : Unless otherwise noted italics appearing in this brief
are ours.

These appellees accept appellant's "Statement" (Appt's. Br. p. 1), their recital of prior steps, and basis for jurisdiction for this Court on appeal contained in appellant's brief under the heading Pleading and Jurisdiction. (Appt's. Br. p. 2.) Appellant's "Statement of Facts" (Appt's. Br. p. 3) is so mingled with conclusions and argument that the Unemployment Commission feels constrained to make its own Statement of Facts.

STATEMENT OF FACTS.

Appellant Frank L. Aragon and the other individual appellants similarly situated, and hereinafter called claimants or employees, on behalf of whom he brings this action, are members of the Alaska Cannery Workers' Union, Local No. 5, C.I.O., an unincorporated association and labor union with collective bargaining powers, hereinafter referred to as "the Union", of San Francisco, California, which is affiliated with District Council No. 2 Maritime Federation of the Pacific and other interested unions. (Testimony Revel Cayton, Tr. pp. 218-219, and District Court Findings of Fact No. 1.)

At all times pertinent to this appeal the Union was the authorized bargaining agent of the said appellants in conducting negotiations with employers as to terms and conditions of employment. Each of the appellees, Alaska Packers Association, Red Salmon Canning Company and Alaska Salmon Company, hereinafter called the San Francisco Operators or Employers

when referred to collectively, is a corporation which has been for a number of years last past engaged in the fishing industry taking and canning salmon in the Territory of Alaska and having its offices in, hiring most of its men in and shipping its supplies from San Francisco, California. Appellants are and were in 1939 employees of San Francisco operators in said industry.

The fishing industry is seasonal as defined by the Alaska Unemployment Act. (Sec. 3 (c) (1).) Because of the differences in climatic and other conditions and in the time when salmon run the seasons prescribed by the Department of Fisheries and the Unemployment Commission vary in different localities. Karluk is on Kodiak Island and Chignik on the Alaska Peninsula a few miles to the west, both on the Pacific side of the Alaska Peninsula, whereas Bristol Bay is on the northern side of the peninsula and opens into Bering Sea. The Alaska Unemployment Commission has after investigation and hearing determined the longest seasonal periods during which the operations are conducted in said fishing industry in Alaska applicable herein as follows: At Karluk from April 5 to September 5; at Chignik from April 1 to September 10, and at Bristol Bay from May 5 to August 5. (Benefit Regulation No. 10, Tr. p. 199.)

During the operating season of 1939 and for at least some years before the employers had hired their workers for the fishing and canning season through the Union and under an operating contract with the Union. The 1939 contract contained a provision for

termination by either party upon notice to the other. After the close of the 1939 season this contract was terminated by Alaska Packers Association. (Ex. B, Tr. p. 267.) It seems to have been assumed that it was also terminated by Alaska Salmon Company and Red Salmon Canning Co. (District Court Findings of Fact Nos. 2, 3 and 4.)

The list of names appearing in the transcript, pages 6 to 13 inclusive (Claimant's Ex. No. 1), contain the names of individuals who were employed during the 1939 season at canneries of the San Francisco operators. They are residents of the State of California who expected to work for the San Francisco operators during the 1940 season. Whether they have filed claims for benefits in accordance with Section 6 of the Alaska Unemployment Compensation Law does not appear in the record.

In early March, 1940, negotiations were commenced between the Union as the bargaining agents for the appellants and the Alaska Salmon Industry, Inc., a corporation organized in 1940 for the purpose of handling labor relation matters for appellees and other Pacific Coast operators in the salmon industry of Alaska (Tr. p. 260) and authorized (Ex. 7, Tr. p. 167, and Ex. 9, Tr. p. 170) to represent employer appellees and others. The Union presented to the Alaska Salmon Industry, Inc. in writing its proposed 1940 agreement (Tr. p. 275) which was more favorable to the employees than the San Francisco 1939 agreement. Negotiations were carried on in San Francisco with the Union but certain other affiliated unions (Machin-

ists and Communications Association, et al.) refused to negotiate. (Claimant's Ex. 11, Tr. p. 173.) On or about April 3 at the instance of the Union all negotiations were transferred to Seattle where the unions and employers attempted to negotiate a coastwide contract covering all salmon fishing and canning operation in Alaska, but with the distinct statement by the Union that no agreement would be signed until certain pre-existing difficulties were settled nor until all the unions signed. Accordingly negotiations were transferred to Seattle. At Seattle there were 71 employers (testimony Rendon) other than appellees represented by the Alaska Salmon Industry, Inc. and some time about the first of June the Union reached an agreement (testimony Vincent Rendon, Tr. p. 99) with those 71 employers on a basis approximately the same as the Seattle 1939 agreement, which the San Francisco employers had been willing to adopt, but the Union refused to work for the San Francisco employers on the same basis.

In order to use the prescribed fishing season in Alaska to the greatest advantage the employers must, prior to the opening of the season, procure needed equipment and supplies, and preparation crews, transport them to the site of Alaska operations and prepare their canneries for operation. Until the canneries are ready to run there is no need to employ fishermen or maintain a full staff of cannery workers. Accordingly it is their custom to sail first loaded with supplies and men to put the cannery plants in shape and after the delivery to return the ships to San Francisco and at a

second sailing take fishermen and cannery workers to Alaska; therefore, on April 3 the employers by letter (Ex. I, Tr. p. 325) notified the Union that after certain dates they could not profitably undertake operations in Alaska for the 1940 season and if on or before these dates complete agreements as to working contracts were not made expeditions to Alaska would not be undertaken. (Testimony St. Sure, Tr. pp. 322-337.) These dates were, as to Karluk and Chignik, April 10; if Karluk not operated and Chignik was operated, April 12; as to Bristol Bay, May 3. (Tr. p. 377 and Ex. V, Tr. p. 379.)

The San Francisco employers offered work to the appellants at the wages and on the terms paid to employees doing similar work who were employed by the Seattle employers under the "Seattle 1939" contract. This offer the appellants refused. (Rendon, Tr. p. 38.)

The employers intended to and would have operated their canneries in Alaska at Karluk, Chignik and Bristol Bay (subject to limitations placed upon the catch by the Bureau of Fisheries as to Bristol Bay operations) and would have employed members of the Union in said operations if a satisfactory agreement with the Union could have been reached. No contract was completed and the employers did not operate during the 1940 season. The failure of the employers to operate was due to a labor dispute.

In preparation for their operations in the 1940 season appellee Alaska Packers Association set aside their fastest vessel for the trip and purchased cans, can ends,

lumber, fibre boxes, caterpillar engines, stationary tractor engines, machine tools, piling, lead and linen nets, supplies, and outfitted to the extent of approximately \$400,000.00. (Testimony Tichnor, Tr. pp. 530-537.)

The Red Salmon Canning Company refused to charter its vessel used in transporting supplies for the reason that the charterer might not return the vessel in time for its Alaska trips with supplies and men for the cannery and prior to May 3 put the ship in condition for the Bristol Bay cannery service; bought supplies and employed extra men and arranged credit at the bank for the amount of money they might need, bought nets, cans and other machinery. (Testimony Peterson, Tr. pp. 560-565.)

Failure to make a contract with the Unions involved was not the only reason that the Alaska Salmon Company did not operate its cannery at Bristol Bay during the 1940 season, but was a contributing cause.

There was curtailment by the U. S. Bureau of Fisheries of the take of salmon from Bristol Bay, but this had no effect upon the decision of the employers not to operate in 1940.

The differences between the Union and the employers which prevented agreement on a 1940 contract were direct differences as to wage scale and conditions of work (testimony Rendon, Tr. p. 40), and refusal of certain unions to negotiate.

The Commission made the following findings of fact and reasons for decision:

“That all of the claimants-appellees were employees of the employers-respondents during the seasonable canning season as set out in Regulation No. 10 of the Alaska Unemployment Compensation Commission for the year 1939. That the employers-respondents notified the various claimants-appellees, through their duly appointed agents, of the cancellation of the working agreement of the year 1939, and of the necessity of entering into a new working agreement for the canning season of 1940. That the agents of the claimants-appellees admitted receipt of the notification of such cancellation, and thereafter entered into negotiations for the canning season of 1940.

That this industry is a seasonable (seasonal) industry, recognized as such by this Commission in setting forth in its Regulation No. 10, the dates for which unemployment compensation could be allowed by the Commission. That the claimants-appellees were fully aware of this condition, as were the employers-respondents. That the dates of operation of canneries in the various sections involved in this controversy, as set out in said Regulation 10, which was adopted by the Commission November 6, 1938, are as follows:

Kodiak Island District, which includes all operations on the Karluk River, one season, April 5th to September 25th;

Alaska Peninsula District, which includes all operations at Chignik, one season, April 1st to September 10th; and

Bristol Bay District, which includes all operations in Bristol Bay, one season, May 5th to August 25th.

That following the notification by the employers-respondents to the claimants-appellees that the employers-respondents elected to cancel the working contract entered into between said parties for the canning season of 1939, and that the same would not be in force for the canning season of 1940, and the necessity of entering into another agreement, negotiations for such an agreement were entered into between said parties and were in active progress at the opening of the canning season as set forth in said Regulation No. 10. That there is evidence before this Commission that no agreement was ever entered into between the interested parties prior to the opening of the season or thereafter.

In the Declaration of the Territorial Public Policy set forth in the first paragraph of the Act creating the Unemployment Compensation Commission, Chapter 4 Extraordinary Session Laws of 1938 as amended by Chapters 1 and 51, Session Laws, 1939, the Legislature of Alaska declares:

'The Legislature, therefore declares that in its considered judgment the public good and the general welfare of the citizens of this Territory, require the enactment of this measure under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.'

The question to be decided by this Commission is if the claimants-appellees are entitled to the benefits of unemployment compensation, as provided for by said Act, through no fault of their own.

Conclusion and Decision.

We conclude that the claimants-appellees and the employers-respondents were engaged in a season industry;

That there was an active labor dispute existing between said parties at the opening of the season; that said dispute continued * * *” (Tr. pp. 646-648.)

Appellants made no assignments of error directed to the trial Court’s finding of fact Nos. 1, 2, 3 and 4. Its remaining findings of fact were as follows:

“5. That negotiations were entered into before the dates of the opening of the season, as prescribed by the regulations of the Alaska Unemployment Compensation Commission, and there was a disagreement between petitioners and the Union and its members and the respondent companies. Demands were made by the Union and its members and by the claimants and petitioners; offers were made by the companies, the respondents, and counterdemands were made, all covering the respective canneries. These demands, offers and counterdemands were all with reference to the terms and conditions of employment, and especially with reference to the wage scales for the 1940 season, and there was a labor dispute between petitioners and claimants, the Union and its members, on the one side, and the respondent companies on the other side, and this labor dispute continued and was never settled but remained in progress as hereinafter set forth.

6. That in order to operate salmon canneries in Alaska, it is necessary for the operators, the

companies, to make preparations sometime in advance to sign on its employes, prepare its ships, purchase and load supplies and sail to the canneries in Alaska in time to make all preparations there and be on the ground when the fishing season opens, as prescribed by law.

7. That after the labor dispute as hereinabove mentioned had continued for some time and no prospect of settlement was in sight, the employers notified the claimants, petitioners and the Union, that if no contract were concluded before April 10 for the Karluk operations, before April 12th for the Chignik operations and before May 3rd for the Bristol Bay operations, it would be impossible to operate and no operations could be undertaken at the canning plants at Chignik, Karluk and Bristol Bay, and the court finds that from the nature of these operations and the requisite nature of the preparations required, no such operations could be undertaken unless agreements were reached before those dates.

8. That no agreement was reached within the time set by the employment for the respective plants, and no agreement was reached within time for the opening of the fishing and canning season as prescribed by the regulations of the Department of Interior and as defined by the regulations of the Unemployment Compensation Commission of Alaska, and no operations could be carried on during the 1940 season by the respondent companies at their canneries at Chignik, Karluk and various points in Bristol Bay.

9. That the labor dispute which was in progress long before the opening dates for fishing and canning as hereinabove set forth, existed and was

in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season as defined by the Commission.

10. That the unemployment of claimants in the 1940 fishing and canning season, and the whole thereof, was due to a labor dispute existing between the employers, the respondent companies herein, and the claimants, and that this labor dispute was in active progress at the cannery at which they were respectively last employed, and there was an active labor dispute between the claimants and the respondent employers during the entire canning season as defined by the Commission at the respective canning plants at Chignik, Karluk and various points in Bristol Bay, Alaska.

11. That the conclusions of law and the decisions of the Alaska Unemployment Compensation Commission were amply supported by the findings and by the evidence, and the decision was proper and in accordance with the findings and evidence, and the findings were sufficient to sustain the decision of the Commission and no other findings were necessary to a determination of the question involved, and such findings and decision were made according to law.

12. That the evidence does not support the contention of claimants that the Alaska Salmon Company, one of respondents, would not have operated in 1940 regardless of the outcome of the labor dispute and regardless of whether or not there had been or had not been an agreement made with claimants.

13. That petitioners made no objections to the findings of the Commission and did not appeal to

the Commission from its decision within the time and in the manner required by law, and that there was complete absence of fraud, and therefore, the findings of the Commission are conclusive.”

ARGUMENT.

On page three of appellants' brief they state the question presented on this appeal to be, “Were appellants unemployed during the 1940 Alaska Salmon season because of a labor dispute in active progress at the establishment at which they were last employed within the meaning of Section 5(d) of the Act?” We think that statement not entirely accurate, that it is a little too broad.

We think the questions to be decided in this Court are: Is there substantial evidence to support the findings of fact of the Commission and the District Court, and, can it be said as a matter of law that the Commission and the District Court were in error in finding that appellants' unemployment was due to a labor dispute which was in active progress during the week for which appellants claim compensation?

Error will not be presumed.

Appellants “invite particular attention to the decision of referee Roden who, as tryer of the facts, had the opportunity to hear witnesses at first hand and whose findings should therefore be entitled to great weight”.

This Court will be guided by the statute which makes conclusive, in the absence of fraud, if supported by evidence, the findings of fact of the Commission, not the Referee. Section 6(i) (Appendix p. v). The unemployment compensation acts of every state contain provisions similar in effect and in most cases exactly the same as Section 6(i) supra. They are given effect by the Courts construing those acts. In a late case (January, 1944) a claim for unemployment compensation was denied by the Indiana Board of Review which found that the claimant left his work voluntarily without good cause. After intermediate steps the case reached the Indiana Court of Appeals which said, Sec. 52-1508 (1) provides “ ‘any decision of the Review Board shall be conclusive and binding as to all questions of fact’. Therefore this Court will not weigh the evidence and will consider only that evidence most favorable to the decision of the board. (Citations.)” *White v. Review Board* (Ind.), 52 N. E. (2d) 500, 501. To the same effect are *Bryant v. Hayden Coal Co.* (1943) (Colo.), 137 Pac. (2d) 417, 419; *In re North River Logging Co.*, 15 Wash. (2d) 204, 130 Pac. (2d) 64 [1]; *Layman v. Unemployment Compensation Commission et al.*, 167 Ore. 379, 117 Pac. (2d) 974, 977, 136 A.L.R. Ann. 1468, 1472; *Wolfe v. Iowa Unemployment Compensation Commission* (Iowa), 7 N. W. (2d) 799, 801 [3]; *M.F.A. Milling Co. v. Unemployment Compensation Commission*, 350 Mo. 1102, 169 S. W. (2d) 929, 931 [1, 2]. Our examination has revealed no case to the contrary.

**CONSTRUCTION OF ALASKA UNEMPLOYMENT
COMPENSATION LAW.**

As a foundation and support to much of their argument appellants rely upon an alleged rule of construction set forth in Specification of Error XII, 3, D. (Br. p. 23) and paragraph "A" under "Argument" (Br. p. 27), as follows:

"The Act, being remedial in nature is to be liberally construed and with a view toward awarding rather than denying benefits."

This is evidently an application of appellants' idea of the "object in mind of the legislature" to the recognized canon of construction, with which this appellee has no quarrel, found in 59 C. J. 1105, Sec. 656, as follows:

"Laws enacted in the interest of public welfare, for the protection of human life or the preservation of health—or providing remedies against either public or private wrongs, should be liberally construed with a view to promote the object in the mind of the legislature."

Appellee commission does not agree that the object in the mind of the legislature was to award rather than deny benefits, nor does it agree as to the effect to be given to a canon of statutory construction. The appellants claim for the rule as they state it an effect both as to the law and the facts more powerful than that of the presumption of innocence. On page 28 of their brief, after reciting four questions of fact which they say are necessary conditions of disqualification under Sec. 5(d), appellants say, "If there is

any doubt on any one of these points it must be resolved in favor of claimant” and on page 40 they say, “*Any* doubt as to the reason for unemployment must be resolved in favor of appellants * * *”.

Even the presumption of innocence requires a *reasonable* doubt to make it effective.

The Commission contends that where the language of the law is plain there is no room for construction; that where there is ambiguity there are canons of construction other than that applied by the appellants to be observed in construing the Alaska Act; that the problems before and the objects in the mind of the legislature were not so simple as appellants indicate, and in ascertaining them the Court may resort to more than one test or canon.

Support is found for this contention in the language of the Supreme Court of the United States in the decision of *Russell Motor Car Company v. United States*, 261 U.S. 514, 43 S.Ct. 428, 67 L.ed. 778, 782, as follows:

“Rules of statutory construction are to be invoked as aids to the ascertainment of the meaning or application of words otherwise obscure or doubtful. They have no place, as this court has many times held, except in the domain of ambiguity. (Citations.) They may not be used to create, but only to remove doubt. *Id.* Moreover in cases of ambiguity, the rule here relied upon is not exclusive. The problem may be submitted to all appropriate and reasonable tests, of which ‘*noscitur a sociis*’ is one.” *Id.*

Since question is raised as to the object in the mind of the legislature and as to the effect and meaning of certain words appearing in Section 5 Subsection (d) of the act, particularly the term "labor dispute" and "in active progress" we invite attention to the amendments that have been made in that subsection. There is ample authority for this method of ascertaining the intent of the legislature.

**CONSTRUCTION AS INDICATED BY AMENDMENTS
TO SUBSECTION 5(d).**

The first Alaska Unemployment Compensation Law was enacted by the 1937 legislature and amended by that of 1939. An amendment of importance in this case changed the provisions of Sec. 5 (d) *supra*. Prior to the amendment it read:

"Section 5. Disqualification for Benefits. An individual shall be disqualified for benefits: * * * (d) for any week with respect to which the Commission finds that his total or partial unemployment is due to *a stoppage of work* which exists because of a labor dispute at the factory, establishment or other premises at which he is or was last employed; * * *".

Under the statute as then written *disqualification* for benefits resulted only when, in addition to a labor dispute there was a stoppage of work. The legislature evidently considered the existing disqualification too narrow and in 1939 broadened it by striking out the words "stoppage of work" and adding the words

italicized below. In 1940 the amended subdivision read as follows:

“Section 5. Disqualification for Benefits. An individual shall be disqualified for benefits * * * (d) for any week with respect to which the commission finds that his * * * unemployment is due to a labor dispute *which is in active progress* at the factory, establishment or other premises at which he is or was last employed; *provided that such disqualification shall not exceed the eight weeks immediately following the beginning of such dispute*; * * *”.

The words “in active progress” were inserted to protect the workman from disqualification if the labor dispute were settled by such an agreement as prevented the employment of the claimant workman, as, for instance, where the settlement resulted in a closed shop, the applicant being non-union, or, in recognition of a union of which claimant was not a member, or any other termination which left the claimant unemployed *through no fault of his own*. To prevent too great a hardship as the result of a continuing dispute the eight weeks’ limitation of disqualification was enacted.

CONSTRUCTION AS INDICATED BY LANGUAGE OF THE ACT.

Purpose to protect employers against the use of the benefit fund as a weapon appears in the preamble, in the wording of Sections 4 and 5 and other places in the act, and Mr. Justice Day tells us in *U. S. v. Standard Brewery, Inc.*, 251 U.S. 210, 64 L.ed. 229, 234,

“Nothing is better settled than that, in the construction of a law, its meaning must first be sought in the language employed. If that be plain it is the duty of the courts to enforce the law as written, provided it is within the constitutional authority of the legislative body which passed it.”

The object of the Alaska Unemployment Compensation Law is clearly stated in “Declaration of Territorial & Public Policy” thus:

“Involuntary unemployment is * * * a subject * * * which requires appropriate action * * * to prevent its spread and lighten its burden * * *”.

“* * * the public good and the general welfare of the citizens of this Territory require the enactment of this measure * * * for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.”

The means appropriate to accomplish those objects are stated generally in the following words:

“This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds * * * from which benefits may be paid during periods of unemployment, * * *”.

Employers are not encouraged to provide stable employment nor is the spread of unemployment prevented by allowing benefit funds to be used to support labor disputes resulting in unemployment regardless of whether they are accompanied by picketing, lock-out or voluntary refusal to work. There is nothing

in the preamble that justifies the assumption that the object of the legislature was to “pay, and not deny benefits.”

Passing to consideration of Section 4, “Benefit Eligibility Conditions.” The use of the word “conditions” instead of “provisions” or “Eligibility for Benefits” as some acts entitle the corresponding section, points to a strict construction of the section, which continues,

“An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that: * * *”.

The use of the restrictive and exclusive word “only” before “if the Commission finds” and applicable to all the benefit eligibility provisions shows definitely that the Alaska legislature intended a strict compliance with and construction of those conditions. No more apt arrangement or choice of words to indicate that purpose could have been chosen.

Also the Commission is given equitable jurisdiction “by regulation to waive or alter the requirements of this subsection”, (a), if “compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act.” This authority to relieve is, however, limited to the requirements of Section 4(a), which deals with the mechanics of showing that the claimant’s unemployment is involuntary. Even the Commission may not relax the strict requirements of the remaining four subsections of Section 4, one of which is “(c) He is able to work and is available for work.”

On the other hand Section 5 "Disqualification for Benefits" contains no such indications of a requirement that construction be strict as appears in Section 4. The object of Section 5 is to disqualify claimants who are not "unemployed through no fault of their own". It is to conserve the fund, protect the tax payer and limit the use of the funds to those strictly entitled. We contend it should be liberally construed to accomplish those objects.

In construing this law it should be kept in mind that this is a taxing act. The legislature while imposing that tax never lost sight of the legislative object to encourage the employer. In Section 7(c) (appendix p. vi), the Commission was charged with the duty of *equitably* rating the employment risk and establishing a system and fixing the contribution to the fund of each employer so as to "encourage stabilization of employment".

In *Hassett v. Welch*, 303 U.S. 303, 82 L. ed. 858, the Supreme Court pointed out and applied the rule that "if a doubt exists as to the construction of a taxing statute the doubt should be resolved in favor of the taxpayer."

The same Court speaking in an appeal involving the constitutionality of the Alabama Unemployment Compensation Act said:

"* * * We see no reason to doubt that the present statute is an exertion of the taxing power to the State."

Carmichael v. Southern Coal and Coke Co., 301 U.S. 494, 81 L. ed. 1245, 1252.

It may be argued that the canon quoted from *Hassett v. Welch*, supra, is applicable only when the validity of the tax imposed upon employers is in question. There would be force to such an argument. However, we are here considering the construction to be given to provisions of the act relating to expenditures and believe there is such a connection between taxation, conservation of and allowance of benefits from the fund as warrants taking into account the canon as to taxing statutes. This relationship between the tax payer and the benefit recipient is recognized by the Courts in cases involving a construction of the law with regard to the eligibility of claimants.

Having under consideration the question of whether a milk and cream hauler was an independent contractor and therefore not entitled to unemployment compensation benefits, or an employee and therefore entitled, the District Court of Olmstead County Third District of Minnesota (6-30-'43) said:

“The Employment and Security Act is remedial and humanitarian in its nature and there is a natural temptation to extend its benefits as far as possible. There is a temptation to say that a milk and cream hauler is engaged in work of such menial character or humble industrial status that he should somehow be brought within the purview of the law. The statute, however, is explicit in this regard. Its benefits are *strictly limited*. An independent contractor does not participate, no matter how simple or menial his work may be.”

In the Matter of Rochester Dairy Company.
From P-H, U.I.S. Minn. § 29564.

A Florida Court said:

“In this holding (Recognition that status of independent contractor is determined by the common law and that claimant is not an employee under the act) we do not lose sight of the benevolent purpose of the Unemployment Compensation Act, but beneficence is not accomplished by the exercise of a ‘rob Peter to pay Paul’ philosophy. Beneficence has to do with the one who pays as well as the one who is paid * * *”.

Gentile Bros. Co. v. Florida Industrial Commission, Prentice-Hall Unemployment Insurance Service, Fla. §29596.

In *Chrysler Corporation v. Smith*, 297 Mich. 438, 298 N. W. 87, 135 A. L. R. Ann. 900, 908, an unemployment compensation case, in answer to the claimants’ contention that the Chrysler Co. had no right to appear and contest the claimant’s right to awards, the Supreme Court of Michigan said:

“This requires but short answer. As a contributor to the fund having an interest in its proper disbursement, it was the right of the corporation, if not its duty, to, see that the purpose and full integrity of the fund was preserved.”

In the same case the Court quoted with approval from the Appeal Board decision, the following:

“This fund (Unemployment Compensation Fund) is in many respects a public trust fund and all who have custody of or control over it are in reality trustees who must at all times administer the fund in *strict* compliance with the provisions of the law. None of the money accumulated in

this fund should ever be disbursed for the purpose of financing a labor dispute nor should it be illegally withheld for the purpose of enabling an employer to break a strike.”

The Supreme Court of Tennessee denying a motion to dismiss an appeal because the Commissioner was not an interested party said:

“Furthermore, under section 9 of the Act the Commissioner administers the unemployment fund and is a trustee thereof”.

Queener v. Magnet Mills, 179 Tenn. 416, 167 So. (2d) 1.

Under the teaching of these decisions certainly the Alaska Unemployment Commission, as a trustee charged with the duty of administering this fund, has an obligation to see that the purpose and full integrity of the Alaska Benefit Fund was and is preserved, and that it be expended only in *strict compliance* with the provisions of the law. No construction of the law or the facts should be indulged in to defeat that obligation.

This appellee believes that the following quotation correctly expresses the intent of the Alaska legislature as to those who bring about their own unemployment and that any construction applied to any of the provisions of Sections 4 and 5 should be such as will support and make effective that intent.

The Supreme Court of Oklahoma in *Board of Review v. Mid-Continent Petroleum Corporation* (1934), Oklahoma, 141 Pac. (2d) 69, 73, speaking by Vice

Chief Justice Gibson, in an action to review an order of the Board of Review awarding unemployment compensation, quotes, with approval, the following holding of the Appellate Court of Indiana in *Knox Consolidated Coal Corporation v. Review Board*, 43 N.E. (2d) 1019:

“The purpose of the Employment Security Act is to promote the general welfare by protecting the homes and families of those who become unemployed through no fault of their own, and the section providing that an individual shall be ineligible for benefits for any week with respect to which unemployment is due to a stoppage of work which exists because of a labor dispute at the factory at which he was last employed *intends to withhold benefits of the act from those who bring about their own unemployment by bringing about or participating in a labor dispute.*”

DEFINITION OF THE TERM “LABOR DISPUTE”.

Appellants contend that the negotiations which the evidence shows were conducted between the Union and the employers and the conditions accompanying those negotiations did not constitute a labor dispute within the meaning of the Alaska Compensation Act. (Paragraph “C”, Appt’s. Br. p. 29.) They support their contention by this statement: “Generally there is no ‘labor dispute’ within the meaning of the Unemployment Compensation Act unless there is a strike or stoppage or leaving of employment or a presently existing employer-employee relationship which is terminated. * * * ”

“Labor Dispute” is defined in the National Labor Relations Act, 29 U.S.C.A. Sec. 152(9) as follows:

“The term ‘labor dispute’ includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.”

The definition in the Norris-LaGuardia Act, 29 U.S.C.A. Sec. 113 (c), is the same except that it omits the word tenure.

Among the states only Alabama has included a definition of the term “Labor Dispute” in its unemployment compensation act. That definition is in the exact words of the National Labor Relations Act, *supra*.

These definitions if applicable in themselves answer and refute appellants’ contention as to necessity of a “strike or stoppage or leaving of employment or a presently existing employer-employee relationship which is terminated.” Of course we admit that each claimant must be unemployed before he can receive benefits, but not that a labor dispute cannot exist without termination of employment.

We are not interested in the meaning of the term in unemployment acts “generally”. We are interested particularly in the meaning of the term in Alaska’s 1939 Act, section 5(d) which does not contain the phrase “stoppage of work” nor the word “strike”

one of which appears in the corresponding section of approximately 32 states or territories.

Appellants argue that the definitions of a labor dispute in the Wagner Act and in the Norris-LaGuardia Act are not applicable in unemployment cases for reasons set out in appellant's brief at page 29. That argument was met in *Barnes v. Hall* (1941), 285 Ky. 160, 146 S. W. (2d) 929, 935 (an unemployment compensation case), the Court saying:

“(1) It may be argued that the definitions above quoted are applicable only to situations covered by the particular acts in which the definitions appear, but since the Workmen's Unemployment Compensation Act (1938) by the mandatory requirements of the Social Security Act, 42 U.S.C.A. sec. 1103, contains the express provision that an otherwise ineligible worker shall not be denied benefits upon his refusal to accept work ‘if the position offered is vacant due directly to a strike, lock-out or other dispute, Sec. 4748g-9 (b) (3), it is at least a reasonable presumption in the absence of a definition in the Kentucky Act that our Legislature intended to use the term ‘labor dispute’ wherever it appeared in section 4748g-9 in the same sense that it was employed in the National Labor Relations Act and the Norris-LaGuardia Act, which were enacted prior to the Federal Social Security Act.* * *

* * * * *

If it should be assumed that a labor dispute within the meaning of the act could exist only between employer and employee, an assumption not supported by reason or any implication contained in the act or by definitions found in social security legislation * * *

The Alaska Unemployment Compensation Law contains the same provisions as those referred to above in the Kentucky statute. In addition Section 12, appendix p. vii, includes a direct statement of acceptance of the provisions of the Wagner-Peyser Act.

The Supreme Court of Colorado in *Sandoval v. Industrial Commission* (another unemployment compensation case), 110 Col. 108, 130 Pac. (2d) 930, 935 said:

“The definition of a labor dispute contained in the National Labor Relations Act, which doubtless may be accepted as a proper definition of the term ‘labor dispute’ where used in unemployment compensation acts is as follows * * *”

In *Dallas Fuel Co. v. Horne* (an unemployment compensation case), 230 Ia. 1141, 300 N. W. 305, Justice Wennerstrum, after quoting the definition of “labor dispute” contained in the National Labor Relations Act, *supra*, says:

“With this definition as a guide it is the conclusion of this court * * *. It is true that the above definition is found in a federal statute which relates to certain labor relations over which the federal government has jurisdiction. However, we are of the opinion that the provisions of this definition are applicable to our present problem.
* * *

It is our conclusion that where action is taken by either a labor organization or an employer that has a bearing upon a controversy as to wages or conditions of employment, a labor dispute has developed as stated in the definition.” (Title 29, *supra*.) “This is true ‘regardless of whether the

disputants stand in the proximate relation of employer and employee.' "

In *Department of Industrial Relations v. Pesnell*, 29 Ala. App. 528, 199 So. 720 (an unemployment compensation case), the Supreme Court of Alabama said in words particularly applicable to the case at bar:

"Our statute merely says the words 'labor dispute' without further definition and with no indication whatever a strike or lock-out must result. A dispute is a verbal controversy. 'To contend in argument, discuss, evade, often to argue irritably, wrangle.' Webster's New International Dictionary, 2nd Edition. There appears, therefore, no foundation for the argument that the words 'labor dispute' as used in the statute are to be interpreted as meaning a verbal controversy resulting in a strike or lock-out."

"Labor dispute includes all controversies between employers and employees concerning the employment or non-employment of any workers whether employees of the employer with whom the dispute arose or not."

C.C.H. Wash. P 1980.02, App. Trib. Dec. No. A-271 (1940).

The cases cited by the appellants to support their position that because "there was no presently existing employer-employee relationship at the commencement of the 1940 season there could be no labor dispute" (Appt's. Br. p. 30) are readily distinguished from the case at bar.

In Pa. Unemployment Commission Appeal (Appt's. Br. p. 30) there was a labor dispute, and while that

labor dispute was being negotiated by the participants therein there was an agreement between the Union and the employers that during the time of the negotiations the employers should be allowed to prepare a new vein for future work. The claimant was employed in preparing the new vein. When the Union and the employers reached an agreement the dispute was settled. The preparation work upon which claimant was employed had been finished. The miners took over and claimant became unemployed because he had completed his work. His unemployment was plainly not due to the labor dispute; it was due to the completion of his contract work.

In *Graham and State Unemployment Commission of Oregon* (Appt's. Br. p. 31) there was a jurisdictional labor dispute between the C.I.O. and the A. F. of L. The labor dispute was ended by the agreement between the A. F. of L. and the employers. The employers discharged the C.I.O. employees in accordance with their agreement with the A. F. of L. The C.I.O. employees applied for benefits and the Court very properly held that their unemployment was not due to a labor dispute in active progress (the wording of the Oregon law). Those claimants were unemployed through no fault of their own. That case has no bearing here except as will be noted hereafter with relation to the termination of a labor dispute.

The Alaska law negatives the necessity of an employer-employee relationship as an attribute to a labor dispute disqualification. Section 5(d) does not say "an employee shall be disqualified", which would

be the natural and appropriate language if employer-employee relationship were necessary to the labor dispute; it says "an individual" shall be disqualified for benefits whose *unemployment* is due to a labor dispute at the premises * * * where he is or "was last employed". The phrase "was last employed" is inconsistent with the "present employer-employee relationship" which appellants deem necessary to a labor dispute disqualification.

We think it is shown by the authorities and the reasoning upon which they are based that employer-employee relationship was not necessary to comply with our statute as to the disqualification because of a labor dispute. But it is to be borne in mind that this was a seasonal industry and these appellants were last employed by the appellees. They expected to be re-employed if agreement could be reached as to terms of employment. The mere fact that their contract, spoken of in the record as "San Francisco 1939", had expired does not necessarily mean that the employee relationship had ceased. There was a controversy as to terms and conditions of employment. None of these appellants had been discharged and the employers were ready to put them to work. If it were necessary, the Court could well find that the employer-employee relationship still existed although the season of unemployment prevented work from actually being carried on. The situation was as if during vacation without pay an employee came to his employer and demanded increased wages and the employer said he couldn't afford to increase the wages

and on the contrary would have to decrease them. The employer-employee relationship would not cease by reason of either the demand or refusal.

In *Barnes v. Hall*, supra (one of the coal mining cases), there existed a condition almost exactly parallel to the case at bar. The Union contract with the mine owners had expired at midnight of March 31, 1939, and, after some negotiations, mining work in the mine was stopped pending settlement of the labor dispute between the Union, as negotiator for the claimant, and the employers. The claimant, Hall, alleged that the miners were not on a strike but had been locked out by the employers and, therefore, that his unemployment was not occasioned by a labor dispute within the meaning of the Kentucky Unemployment Compensation Act. The Court said [2], page 936:

“If it should be assumed that a labor dispute within the meaning of the Act could exist only between employer and employee,—an assumption not supported by reason of any limitation contained in the Act, or by definitions found in social security legislation,—the fact remains that there is no evidence in this record that the contract which expired on March 31, 1939, was a contract of employment or that its expiration terminated the relationship of employer and employee theretofore existing between the appellants and the miners employed by them. The contract was not introduced in evidence and the facts shown merely indicate that the agreement regulated the wages, hours, the privileges of those

members of the union whom appellants have theretofore employed, or who might thereafter be engaged, and who in turn as individuals were privileged to terminate or renew their respective employments at will."

Appellants' brief (p. 32) cites the Ohio case of *United States Coal Company v. Unemployment Compensation Board of Review*. Very fairly they point out that disqualification under the Ohio statute exists only where there is a "strike". For that reason the case is not applicable here. Furthermore, that opinion was criticized in *Sandoval v. Industrial Commission*. The Colorado Court in declining to follow its reasoning, said:

"The Ohio statute is similar to our Colorado law, in that compensation is not payable if the unemployment is due to a strike. The case is authority for claimants' contention, but the opinion is based, as we think, on the fallacious assumption that in the absence of a contractual obligation to work, and to employ for contractually specified wages and hours and under contractually specified conditions, there can be no strike. That such was the court's view is indicated by the following excerpt from the opinion:

"We find this definition of "strike" in Baldwin's Century Edition of Bouvier's Law Dictionary, page 1140, to-wit:

"A combined effort by workmen to obtain higher wages or other concessions from their employer by stopping work at a preconcerted time."

‘The facts in the instant case do not bring the acts of these employees within this definition, which definition we regard as excellent. Here, there was no combined effort to stop work at a preconcerted time. There was simply a conference attempting to work out an agreement between the interested parties.

‘The only contract existing between them had ended. No duty rested upon either the operators or the miners. The operators were under no obligation to keep the mines open. The miners were under no obligation to work. There was no contractual obligation.’” (This is the ‘paragraph quoted by appellants.)

The *Sandoval* case continues:

“[2] The definition of a strike as given in Restatement of the Law, Torts, section 797, quoted by claimants in their brief, is as follows: ‘A strike is a concerted refusal by employees to do any work for their employer, or to work at their customary rate of speed, until the object of the strike is attained, that is, until the employer grants the concession demanded. * * *’

This definition emphasizes as the essential of a strike the concerted refusal of employees to work for their employer, rather than the concerted cessation of work. It is more comprehensive than the definition quoted in the Ohio court’s opinion, and we think is applicable to the present situation. While there may have been no preconcert in the cessation of work, the record before us does disclose a concerted refusal to work in the interim pending consummation of

the Appalachian Agreement until certain concessions during such interim were obtained.

We are not persuaded by the reasoning of the Ohio Court of the correctness of its decision."

* * * * *

"A concerted refusal to work, or a concerted cessation of work in and of itself under circumstances such as are presented in this case, is but the exercise of a right and violates no contractual obligation the men owe to the operators. A refusal to employ under such circumstances violates no contractual obligation the operators owe to the men. *It is not necessary, however, that there be such contractual obligations in order that a strike exist.* While the men are unemployed, expecting to return to work, and while the operators had closed their mines expecting, however, to reopen them and reemploy the men, an actual employer-employee relationship did not exist; but neither was their relationship the same as that of men seeking employment from and negotiating for terms with operators between which and them an actual employer-employee relationship had never existed. As near as the relationship that did exist can be described, it was a suspended employer-employee relationship and recognized by both parties as such."

Sandoval v. Industrial Commission, supra, p. 935.

We believe that there was an actual employer-employee relationship which was not destroyed either by the termination of the 1939 agreement or by the seasonal period of unemployment; but, in any case, the

suspended employer-employee relationship existed and under the reasoning of the *Sandoval* case it would support a strike.

Quite in line with the reasoning of the above cases appellant Unemployment Commission contends that if a strike be necessary to support their denial of benefits to appellants the evidence shows that appellants struck. Whaley, Young, Acosta and Cayton in answer to leading questions testified that there was no strike. That neither the Union nor the Council declared or authorized a strike. That there was no picket line. But those answers were either conclusions or directed to evidence of a strike. A picket line is only evidence of a strike. A strike can exist without an order of a Union or Council. The testimony leaves no escape from the fact that the appellants were in concert demanding from the employers an agreement concerning conditions and wages which they had submitted to the employers in March, 1940. (Respondents' Ex. G, Tr. p. 275.) That agreement was refused by the employers who offered employment according to the terms of the "1939 Seattle Agreement" (Claimants' Ex. No. 3-A, Tr. p. 41), which offer was refused by the appellants, who, acting together as a Union, refused to work until their demands were met. Mr. John W. Acosta, a member of the 1940 negotiating committee, testified (Tr. p. 189) in response to Mr. Madison's questions,

"We used the 1939 San Francisco agreement as a basis for agreement. It all depends on the companies' answer, and we didn't intend to lose absolutely nothing from the 1939 agreement.

Q. You wanted to get at least 1939 (San Francisco)?

A. Well, it is reasonable to understand. An agreement is based upon certain things we gained before, and we are asking certain things in addition to that. But it was to the discretion of the Company to agree we would get it.

Q. In other words, you figured that each year what you get you are at least going to get that next year, and maybe something more?

A. Well, the general idea of the members is when we signed an agreement with the Company for 1939 there was a general understanding that that was the starting point for future negotiations.

Q. Nothing less than that?

A. Naturally.

Q. And so, do I understand that you were willing to, always willing, to go on 1939 and not get anything more?

A. Of course, we always want some more.

Q. Always want some more?

A. Naturally.

Q. Did you ask for more?

A. Naturally, the agreement calls for it. You read the agreement, I suppose."

Testimony of Revels Cayton, secretary of District Counsel No. 2, Maritime Federation of the Pacific, who acted as negotiator and coordinator, who had "his finger tips on the general pulse of the thing (negotiations) more than any one individual" (Tr. p. 240), brings out in his recross examination by Mr. Madison the concerted nature and plan of the Unions (Tr. p. 251):

“Q. It is a fact isn’t it, in these negotiations all the members of the Maritime Federation have a definite understanding and agreement that one Union won’t sign up until they are all satisfied to sign up?

A. Yes. But you can’t take it——

Q. (interrupting). Is that a fact or not?

A. The Unions before any one signed(s) try to reach an accord generally. And the factors as to what makes them reach an accord is the thing I am stressing here and which can’t be underestimated.

Q. The fact of the matter is, isn’t it, you have always taken, the Maritime Federation has always taken the position one Union won’t sign up until all members of the American Federation are ready to sign up?

A. We sign jointly.

Q. And you advise the packers to that effect?

A. Yes. And the very fact we do this would in this case be a safeguard for the two big Unions because, once they are ready to sign, then they would be able to move as a group and that would mean pressure would be on all the smaller ones to come in. And Unions like A.C.A. and Radio Operators are continually quarrelling because they say, ‘We are one of the small Unions. When the big Unions sign up we have pressure on us.’ * * * (Tr. p. 253, condensed.)

A. The Cannery Workers won’t sign until everybody is ready to sign—neither will the Fishermen. No one will sign without the other. Nobody will sign until each Union is ready to sign.”

This was during April of 1940. The employers were ready to sail to the Alaska fishing and canning grounds at the usual sailing times and proceed with operations there. They needed workers; they offered the same wages and terms that had existed the year before in the same industry for workers leaving Seattle. The workers, represented by their Unions, demanded more wages and better conditions than they had had the previous year, and to enforce their collective demands refused to work. Under the definition from the Restatement of the Law, quoted in the *Sandoval* case, supra, and under the dictionary definitions quoted and applied in the *Bledsoe* and *North River Logging* cases, supra, the concerted refusal of the appellants to work constituted both a labor dispute and a strike. Appellants were on a strike as effectively as if they had put out pickets and their Union had passed resolutions, and their succeeding unemployment was directly due to that labor dispute and/or strike.

THE QUESTIONS "WAS THERE A LABOR DISPUTE IN ACTIVE PROGRESS" AND "WAS CLAIMANTS' UNEMPLOYMENT DUE TO THAT DISPUTE" ARE QUESTIONS OF FACT, TO BE DETERMINED BY THE COMMISSION.

In an exhaustive study of the provisions of the South Carolina Unemployment Compensation law and its construction the Supreme Court of South Carolina, after determining that the Commission had before it evidence which would justify its finding that a

labor dispute was in active progress, stated as one of the questions to be determined:

“1. Was the finding by the Commission that a labor dispute existed at the Hampton Division, Pacific Mills, a finding of fact by the Commission that could not be disturbed by the Court on appeal?” (p. 869.)

In deciding this question the Court said (p. 871):

“Section 5 of the Act provides in part:

‘An individual shall be designated for benefits:

(d) For any week with respect to which the commission finds that his total or partial unemployment is directly due to a labor dispute in active progress in the factory * * *’.

It is obvious, therefore, that it was not the intent of the Legislature to give the courts the right to determine whether a labor dispute existed, for under Section 5 of the act this right is patently given to the commission whose duty it is to determine by testimony and the evidence in each case whether certain facts existed among them whether or not a labor dispute existed, as a matter of fact. Accordingly in the instant case the commission has determined that a labor dispute did exist at the time and place under consideration and has so declared in its findings; and by the express provisions of the Act, such findings are final just as the findings of a petit jury on the facts are final. Neither the Circuit Court nor this court can interfere with those findings, * * *

“We believe that under the foregoing holding of this court, *the question as to whether a labor*

*dispute existed in this case was a factual issue to be determined by the Commission. * * *".*

"Just as a labor dispute is a condition of fact under the statute, so is the issue as to whether the claimants' employment was directly due to it".

Johnson v. Pratt, 200 S.C. 315, 20 S.E. (2d) 865, 871.

In the above cited case the Court also determined (citing from the syllabus) that,

"The Unemployment Compensation Commission, in its statutory authority to hear and determine cases arising under the Unemployment Compensation Law, is analogous to the Industrial Commission in its right to hear and determine matters arising under the Compensation Act."

The Supreme Court of the United States has very recently discussed the weight to be given to administrative agency construction of the meaning of statutory terms used in the acts which they administer. Having under consideration the meaning of the term "employee" as used in the National Labor Relations Act, the Court said:

"It is not necessary in this case to make a completely definitive limitation around the term 'employee'. *That task has been assigned primarily to the agency created by Congress to administer the Act * * **"

"In making that body's (administrative agency) determinations as to the facts in these matters conclusive, if supported by evidence, Congress entrusted to it primarily the decision whether the evidence establishes the material

facts. Hence in reviewing the Board's ultimate conclusions, it is not the court's function to substitute its own inferences of fact for the Board's when the latter have support in the record. (Citations.) Undoubtedly question of statutory interpretation, especially when arising in the first instance in judicial proceedings are for the courts to resolve, giving appropriate weight to those whose special duty is to administer the questioned statute. (Citations.) *But where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited.* Like the commissioner's determination under the Longshoremen's & Harbor Workers' Act that a man is not a 'member of a crew' (citation), or that he was injured 'in the course of employment' (citation), and the Federal Communications Commission's determination that one company is under the 'control' of another (citation), the Board's determination that specified persons are 'employed' under this act is to be accepted if it has 'warrant in the record' and a reasonable basis in law."

National Labor Relations Board v. Hearst Publications (Apr. 24, 1944), (U.S.), 88 L. ed. 824, 834-35 (Advance Sheets No. 13).

We contend that the finding of the Alaska Commission that the appellants were disqualified because their unemployment was due to a labor dispute in active progress at the establishment where they were last employed is supported by substantial evidence and is binding on this Court.

THE APPELLANTS WERE NOT SUFFERERS FROM "INVOLUNTARY UNEMPLOYMENT" NOR WERE THEY "UNEMPLOYED THROUGH NO FAULT OF THEIR OWN" WITHIN THE MEANING OF THOSE WORDS IN THE ALASKA UNEMPLOYMENT LAW.

Construing the phrase "no fault of their own" found in the preamble, and the term "labor dispute" occurring in their disqualification section, the Supreme Court of the State of Indiana says:

"What is meant by the term 'labor dispute' has been the subject of our inquiry and to determine the question we have looked to the entire act and its purposes. The declared purpose quoted above is to provide benefits for persons unemployed through no fault of their own and to encourage stabilization in employment.

"Appellees say that the word 'fault' means 'something worthy of censure'. We cannot believe that the word as used in the statute was intended to have such a meaning. We cannot believe that it was intended that, under war-time conditions such as now exist, a person with regular employment with which he has been satisfied may *voluntarily* quit work and go forth seeking higher pay in a munitions factory, and make claim for and receive compensation benefits until he finds a position more to his liking or decides to return to his previous employment. It must be concluded that such unemployment did not occur through no fault of his own. Thus 'fault' must be construed as meaning failure or volition. This construction is consistent with the provision that there shall be no benefits paid if unemployment is due to a stoppage of work because of a labor dispute. It is perfectly legal for employees to contend for better wages and working conditions and

to refuse work if their demands are not complied with, and it cannot legally be said that such action is worthy of censure or that it constitutes wrongdoing. It must be concluded that the purpose of the act was to provide benefits to those who were *involuntarily* out of employment, and not to finance those who were willingly and deliberately refusing to work because of a failure of their employers to accede to demands for higher wages.

“We have here in the facts a situation in which the employees refused to continue in their regular employment unless and until the employer agreed that their wages should be based upon a wage scale, the terms of which were to be determined by future agreement then under negotiation. Whether the International Union, then negotiating with the Appalachian Operators, was the bargaining agent of the local union is immaterial. They sought to bargain for themselves under the direction of the International Union, and proposed that they would continue work only upon condition that their pay should be determined by an agreement to be reached by the International Union and the Appalachian Operators. Here was a disagreement between the employer and the employees as a whole as to wages; a demand by employees for new and different terms, and a refusal of the employer to comply, and a refusal of the employees to work as a consequence. It was a controversy. This was a strike in the ordinary meaning of the word. Webster defines a ‘strike’ as: ‘Act of quitting work; specif., such an act done by mutual understanding by a body of workmen as a means of enforcing compliance with demands made on their employer; a stopping of work by workmen in order to obtain or resist a

change in conditions of employment.' 'To quit work in order to obtain, or resist, a change in conditions of employment.' Webster's New International Dictionary, Second Edition. Strikes are generally considered as coercive. This strike was the result of disagreement after negotiations about wages and working conditions. The fact that the contract under which the employees had been working had expired is of no importance. They were unemployed because of their refusal of an offer of work for wages and under conditions identical with those provided in their expired contract.

"While we have not before been called upon to consider this statute, the question is not new, and has been passed upon in many states where the statutes are substantially identical, and in cases in which the facts are substantially identical with those of the case at bar. We find strong support for the conclusion we have reached in the language of the opinions. See *Ex parte Pesnell*, 1940, 240 Ala. 457, 199 So. 726; *Department of Industrial Relations v. Pesnell*, 1940, 29 Ala. App. 528, 199 So. 720, certiorari denied by United States Supreme Court, 313 U.S. 590, 61 S.Ct. 1113, 85 L.Ed. 1545; *Barnes et al. v. Hall*, 1941, 285 Ky. 160, 146 S.W. 2d 929; *Miners in General Group et al. v. Hix et al.*, 1941, 123 W.Va. 637, 17 S.E. 2d 810; *Dallas Fuel Co. v. Horne, et al.*, 1941, 230 Iowa 1148, 300 N.W. 303; *Block Coal & Coke Co. et al. v. United Mine Workers et al.*, 1941, 177 Tenn. 247, 148 S.W. 2d 364, 149 S.W. 2d 469."

Walter Bledsoe Coal Co. v. Review Board
(Indiana), 46 N.E. (2d) 477, 479.

The foregoing was quoted with approval by the Supreme Court of Oklahoma in *Board of Review v. Mid-Continent Petroleum Corporation*, Okla., 141 Pac. (2d) 69, 72, 73.

**THE LABOR DISPUTE WAS IN ACTIVE PROGRESS AFTER
THE DATES FOR SAILING HAD PASSED.**

The Commission and the District Court found that there was an active labor dispute existing between appellants and employers at the opening of the season and that said dispute continued. (Tr. pp. 648, 716.)

Appellants assign error in these findings, and claim that if there was a labor dispute it was "not" in active progress after April 10, 1940, at Karluk; after April 12, 1940, at Chignik; and after May 3, 1940, at Bristol Bay. The referee found that the dispute was not active after those dates. They are the dates fixed by the employers as the last dates for completion of arrangements for employment with respect to the respective operations. (Tr. Ex. I, p. 325.) On those dates the season had been open at Karluk 6 days, at Chignik 13 days and would not open at Bristol Bay for 1 day. In discussing this assignment of error we shall assume that a labor dispute existed and had existed from early March, 1940. (Tr. p. 272.)

Appellants adopt the referee's reasoning (Tr. p. 641 et seq.) which is that after those dates the dispute became dormant. That it was so treated by both parties. That no action was taken by either of them to resume negotiations.

We think the referee let the fundamental purpose of the provision "in active progress" escape him; that he confused negotiation with dispute.

Considered in the light of the provisions of the act and particularly of the purpose of the legislature to confine benefits to those unemployed through no fault of their own, it seems apparent that the activity which must exist is such as affects the unemployment of the claimant. That so long as a dispute is in such a relation to employment that it can and does keep a claimant who took part in it unemployed the dispute is active. If it is still potent as the cause of claimant's unemployment it is still active. As pointed out earlier in this brief (in discussing the reasons for amendment of Sec. 5(d) the words "in active progress" were inserted to prevent disqualification in cases where the dispute has been settled in such a way that it ceased to be the cause of claimant's unemployment. In the *Graham* case cited by appellants such a situation existed. The dispute was ended by settlement. The shop became A.F. of L. and the C.I.O. employees lost their employment by reason of the agreement of the employers to employ A.F. of L. members. The dispute, the Court properly held, had ceased to be in active progress because it was settled. It had nothing further to do with the unemployment of the claimants. The same reasoning applies in the Indiana Appeal Tribunal decision cited by appellants. (Br. p. 37.) In the *West Virginia Appeal Tribunal* decision the same principle applies. The dispute was settled. It was not because of the dispute that claim-

ant was unemployed. In the *Minnesota Appeal Tribunal* case the unemployment came about because of an order of the Court to sell assets and close the business. So far as the citation indicates the existence of the labor dispute had nothing to do with that order of sale, and nothing to do with the unemployment of the claimant.

The referee partly based his conclusion upon the possibility that the dispute would continue indefinitely, that "like Banquo's ghost or John Brown's soul" it might go marching on. The legislature provided against possible continuance of the dispute, by providing that disqualification should continue only eight weeks.

And another reason for the referee's conclusion was that " * * * the die was cast and the Rubicon crossed."

It is true that no settlement had then been reached. On the 10th day of April, 1940, the union rejected the employers' offer to operate under a memorandum binding them and the union to abide by the terms of such coastwise agreement as might be adopted in Seattle. (Testimony St. Sure, Tr. p. 355 et seq.) The employers did not close the door to further negotiation, but economic pressure forced them to refuse to operate without knowing that the outcome of those negotiations would be binding. They were forced to abandon operations. The situation from a legal standpoint is no different than if a lockout had occurred on the respective deadline dates. It is settled that in such a situation a labor dispute exists and continues for the duration of the lockout.

There is ample authority for this statement. Among them are the following:

“The merits of the dispute, the cause of the dispute, and the kind of dispute; i.e., whether a strike or a *lockout* are not proper questions for consideration. The sole thing to be determined is whether or not an individual’s unemployment is due directly to the existence of a labor dispute; and if so determined whether he might be extended the exemption allowed under the subsections following 6D. (Same as Alaska’s Section 5(d).)”

Appeal Tribunal Decision No. AT-418, 10-14-40,
C.C.H. Florida P. 1980.01.

Under facts in most respects similar to those at bar the Mississippi Board of Review denied benefits:

“Stoppage of work at a mill is due to a labor dispute where mill was shut down under the following circumstances: (1) Mill operators submitted to union representatives proposals which they claimed had to be adopted if mill was to continue operations; if not adopted operators claimed it would be financially impossible to operate; (2) Union rejected proposals by unanimous vote; (3) Mill was shut down and workers locked out on first normal working day after union rejection.

While financial condition of company caused the making of proposals, *it did not cause the mill to shut down*. It was the union’s rejection and subsequent lockout by the owners which caused the shut down.”

Digest Board of Review decision, 1-BR-39, P-H
U.I.S. Miss. § 27,821.3.

In the *North River Logging Company* case a dispute arose between employer and employee regarding overtime work. Crews were ordered to report for work Saturday on a straight time basis and were told that if they would not work on that basis the company would shut down operations for the rest of the year. The men refused to work. On the following Monday the men reported for work. They found the camp shut down. Settlement was reached slightly over a month later. The men applied for unemployment benefits covering the interval. Benefits were denied, because the unemployment was due to a labor dispute.

The Court said:

“So the question for determination, as it finally resolves itself, is whether or not a lockout is a labor dispute in contemplation of Rem. Rev. Stat. Supp. § 9998-105(e). For it is clear that the shut down from Sept. 9 to October 14th was a lockout in the generally accepted definition of the terms: A suspension of operations by the employer resulting from a dispute with his employees over wages, hours or working conditions. *That a lock-out* is a labor dispute in contemplation of the unemployment compensation act we think equally clear for several reasons: * * *”.

In re North River Logging Co., 15 Wash. (2d) 204, 130 Pac. (2d) 64, 65-66.

In presenting its reasons for holding that a lockout is a labor dispute the Court notes that the English decisions are uniform in holding that a lockout is a labor dispute in contemplation of the national insurance acts.

Alaska's statute recognizes a lockout as a labor dispute in Section 5(c)(2)(A), "If the position offered is vacant due directly to a strike, lockout or *other* labor dispute."

The Alaska statute does not, as the statutes of some states do, relieve a claimant from disqualification if his unemployment is due to a lockout. There is nothing in our statute that indicates a purpose to distinguish between kinds of labor disputes in their effect to disqualify claimants from participating in benefits.

The Iowa statute is very similar to that at bar. As particularly pertinent to this phase of our discussion we quote again the last half of our quotation from *Dallas Fuel v. Horne*, *supra*:

"[3] It is our conclusion that where action is taken by *either a labor organization or employer* that has a bearing as to a controversy as to wages or conditions of employment a labor dispute has developed."

In the face of the foregoing decisions it can hardly be said that the Commission did not have substantial evidence to support its finding that the labor dispute continued after the so-called deadline dates.

The Commission is a practical body. Its function is to examine the facts and apply the law.

One of the purposes of the law, as set out in the "Declaration of Territorial Public Policy" is to relieve against the evils flowing from *involuntary unemployment* and a means of relief issue of unemployment reserves "*for the benefit of persons unemployed*

through no fault of their own". We contend that to apply the phrase "in active progress" as the appellants would apply it is to nullify the very purpose of the act. Here a labor dispute had developed. There was a job—a very large job. Establishments were built, machinery installed. Fish were in the ocean to be taken. Employers had expended hundreds of thousands of dollars in preparation for the season's work. They intended to operate and wished to do so. Workers only were lacking. Employees were ready to work if their conditions were met, but employers claimed it was financially unprofitable to meet those conditions. Prior to the opening of the season claimants were ineligible to benefits because the season had not begun. (Section 2(c), Appendix p. ii.) Negotiations continued as to Chignik and Karluk (Central Alaska) for approximately a week after the season opened. Each party to those negotiations was within its legal right in refusing to agree to the demands of the other and the Commission's function is not to determine which party should have yielded nor whether some middle course should have been taken, but there can be no question from the evidence that the unemployment of the claimants during the first week of the seasons at Chignik and Karluk was due to the labor dispute then existing. That reason for their unemployment did not cease on the "deadline" dates. It continued during all the remainder of the season. On those dates and thereafter the men were voluntarily unemployed within the reasoning of the *Bledsoe Coal* case quoted above and the cases cited therein. They were not involuntarily unemployed. The following language of the Court in

Bodinson Mfg. Co. v. California Employment Commission (17 Cal. (2d) 321, 328), applied there to refusal of workers to cross a picket line, is equally applicable here.

“Their (claimants’) own consciences and faith in their union principles dictated their action. This choice is one which members of organized labor are frequently called upon to make, and *in the eyes of the law this kind of choice has never been deemed involuntary.*”

Had the referee found that negotiations continued after the deadline dates he would have found the labor dispute active, but the fact that one of the disputants may have said to the other “will you concede this or that”, and the other refused or made some counter suggestion would not have made the dispute any more active or effective to prevent unemployment than it actually was so long as an agreement was not reached.

To adopt the construction of the referee would defeat the very purpose of the disability section of the Act indicated in *Mid-Continent Petroleum* case, *supra*, as,

“* * * to withhold benefits of the act from those who bring about their own unemployment by bringing about or participating in a labor dispute”,

and it would defeat the duty of the Commission as set forth in the *Chrysler* case, *supra*, to see that:

“None of the money accumulated in this fund should ever be disbursed for the purpose of financing a labor dispute, * * *”

In this connection we may add that the record shows that the claimants definitely considered their chances of getting unemployment benefits in connection with their decision as to whether they would sign an agreement with the employers.

Not only did the union post notices in its hall that members not working could file an application for unemployment compensation (testimony Rendon, Tr. p. 599) but on May 29, 1940, the union in San Francisco was considering whether it should "go on record to sign the 1939 agreement offered by the industry under protest" or insist upon the 1939 San Francisco agreement (which was more favorable to the union than that offered by the industry). (Referee's Findings of Fact, Tr. p. 614; Testimony of Sam Young, Tr. p. 208.) The minutes of the meeting (Ex. 15, Tr. p. 211) contain the following:

"Report of the Negotiating Committee and Coastwise Negotiating Committee was discussed at length.

Brother George Anderson discussed the Executive Board recommendations at length, and assured us that we will have a very good chance of getting our unemployment insurance, as we are having a hearing on this very soon; and the hearing will take about 8 or 10 days. Then this material has to be sent to Alaska and then rediscussed and sent back here."

Fortified by this advice the union decided then, as all the testimony on the subject indicates it had done before, as stated by its witness John W. Acosta (Tr. p.

189), that it "didn't intend to lose absolutely nothing from the 1939 (San Francisco) Agreement".

At page 39 et seq. of appellants' brief they allege that their unemployment was not "due" to the labor dispute but was due to the seasonal nature of the industry, and they cite a number of administrative body decisions to support their position. Some of these citations have doubtless been superseded in the loose leaf services from which they are cited. We have not been able to find them.* With those that we have found we do not disagree. Not one was directly applicable to the facts which are here presented. They all were decided upon a factual situation similar to that which appellants quote, in which for some reason not connected with, or occurring before a labor dispute, an employee is discharged or laid off temporarily. In such cases it was held that the employee's unemployment was not due to the labor dispute.

*One of these is *Michigan Unemployment Comp. Comm. Ref. Dec. No. 1589, C.C.H. Mich. #8049.06*, cited at page 42 of appellants' brief. Since no report of the facts can be found, the decision can have no weight as a precedent. However, on appellants' own statement, the decision is not in point. The Michigan Act, unlike the Alaska Act, has no provision relative to seasonal employment. "The payment of benefits to * * * individuals [engaged in seasonal employments] is therefore governed by the same provisions which regulate the payment of benefits to other individuals." (C.C.H. Unemployment Insurance Service (Mich.), par. 2000.) Accordingly it appears that compensation in the cited case was payable because the unemployment was due to and occurred in the seasonal lay-off. Under the Alaska Act no compensation is payable for unemployment during the seasonal lay-off. (Section 2(c), appendix p. ii.) Here the Commission found upon uncontroverted evidence that the appellants' unemployment in 1940 *was due to the labor dispute in 1940*.

The authorities we have presented under the heading "Meaning of the Term 'Labor Dispute' " seem to us to afford a complete answer to the contention that the appellants were not engaged in a labor dispute because they lost their employment at the end of the 1939 season. To constitute a labor dispute it is not necessary that a common law relation of employer and employee exists between the disputants. Some cases contain expressions that indicate that such a relation is necessary to a strike, but we think the weight of the law otherwise; that the true rule is the one adopted in the *Sandoval* case, *Barnes v. Hall*, *Dallas Fuel v. Horne*, cited *supra*, namely, in the application of unemployment compensation acts neither the Courts nor the Commissions are held to the common law definitions of employer and employee.

In cases of seasonal employment there is at least a suspended employer-employee relationship. In a seasonal industry benefits are paid, under the Alaska statute (a number of the states have no provisions relating to seasonal employment) based upon the season of employment and are not allowed during the season of unemployment. That season is treated as if it did not exist. We submit that as applied to seasonal industries there is no discharge of the employees at the end of the season. Both they and the employer expect to resume relations at the opening of the season. At page 594 of the transcript Vincent Rendon testified:

“Q. What do you do between the time you usually come back from Alaska and the time you go back to Alaska next year?

A. Well, I wait for the season again.

Q. You don't do any work at any time?

A. Well, I can't find any job here.

Q. What did you do between, say August of last year and May of this year?

A. Well, I hung around our union hall.”

That, we assume, is typical of the situation of the men during the season of unemployment. They depend upon and expect to go to work for the canneries when the season opens. They then report for work and in the absence of a labor dispute the union assigns them to some cannery. They are neither discharged at the end of the season nor formally hired at the beginning of the next season. (Testimony Rendon, Tr. p. 597.)

**THE FINDINGS OF THE DISTRICT COURT AND THE
COMMISSION WERE SUFFICIENT.**

In their specification of error No. VII appellants propound a number of questions upon which it claims the Commission should have but did not make findings, and assigns error because the District Court found (Finding No. 11) that the Commission's conclusions of law and decision were supported by its findings and the evidence.

Both findings were correct. The Commission was not required to find the evidentiary facts leading to the ultimate facts that there was a labor dispute, that

claimants' unemployment was due to that labor dispute and that the labor dispute continued (was in active progress). That findings of fact should not contain evidentiary facts is elementary.

“An ultimate fact is the final or resulting fact reached by deduction from the detached or successive facts in evidence,—the fact which is fundamental and determinative of the whole case. It has been many times correctly observed that it is ultimate facts which a court is required to find, and *that the court is not required, nor is it proper to set out the evidence or probative facts.*”

Bancroft's Code Practise and Remedies, Part VI, Chap. XXV, Sec. 1685, p. 2164.

In specifications of error Nos. II and IV appellants assign error because certain findings of the District Court were immaterial.

Even if the findings are immaterial that fact is also immaterial, provided sufficient findings remain.

“Obviously, however, a judgment may not be set aside because of an immaterial variance between the findings and issues, because the findings do not conform to immaterial issues in the pleadings, or where the facts asserted to be without the issues are alleged in the appellant's pleading.” (Id. Section 1690, p. 217.)

CONCLUSION.

This appellee respectfully submits that the record shows no error and that the judgment of the District Court should be affirmed.

Dated, San Francisco,

June 5, 1944.

E. COKE HILL,

Attorney for Appellee

*Alaska Unemployment Compensation
Commission.*

(Appendix Follows.)



Appendix.

Appendix

STATUTES.

Provisions of the Unemployment Compensation Law of Alaska which will be referred to in this brief as applicable to this case are as follows:

“Declaration of Territorial Public Policy. As a guide to the interpretation and application of this Act, the public policy of this Territory is declared to be as follows:

Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to

be used for the benefit of persons unemployed through no fault of their own."

*"Section 2—Definitions * * **

(c) provided, however, that if an individual has earned wages only in a seasonal industry, his claim shall not be valid until the beginning of the claimant's next recurring seasonal period."

"Section 4—Benefit Eligibility Conditions. An unemployed individual shall be eligible to receive benefits with respect to any week *only* if the Commission finds that:

(a) He has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the commission may prescribe, except that the commission, may, by regulation waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this Act.

(b) He has made a claim for benefits in accordance with the provisions of Section 6(a) of this Act.

(c) He is able to work, and is available for work.

(d) He has been unemployed for a waiting period of two weeks. Such weeks of unemployment need not be consecutive. No week shall be counted as a week of unemployment for the purposes of this subsection:

(1) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits, provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment.

(2) If benefits have been paid with respect thereto.

(3) Unless the individual was eligible for benefits in all respects, except for the requirements of this subsection, of subsection (d) of Section 3 and of subsection (e) of Section 5.

(e) He has during his base period earned wages for employment by employers equal to not less than twenty-five times his weekly benefit amount." * * *

"Section 5.—Disqualification for Benefits. An individual shall be disqualified for benefits:

(a) For the week in which he has left his most recent work voluntarily without good cause, if so found by the Commission, and for not more than the five weeks which immediately follow such week as determined by the Commission according to the circumstances in each case.

(b) * * *

(c) If the Commission finds that he has failed, without good cause, * * * or to accept suitable work when offered to him * * *

(1) * * *

(2) * * *

(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided that such disqualification shall not exceed the eight weeks immediately following the beginning of such dispute; and provided further, that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or directly interested in the labor dispute which caused his unemployment, and

(2) He does not belong to a grade or class of workers out of which immediately before the commencement of the dispute there were members employed at the premises at which the dispute occurs any of whom are participating in or directly interested in the dispute;"

"Section 6.—Claims for Benefits.

(a) 'Filing.' Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. * * *

(i) 'Court Review.' Within thirty days after the decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such decision, in which action any other party to the proceeding before the Commission shall be made a defendant. In such action, a petition which need not be veri-

fied, but which shall state the grounds upon which a review is sought, shall be served upon the Commission, or upon such person as the Commission may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the Commission shall forthwith mail one such copy to each such defendant. With its answer, the Commission shall certify and file with said Court all documents and papers and a transcript of all testimony taken in the matter, together with the Commission's findings of fact and decision therein. The Commission may also, in its discretion, certify to such court questions of law involved in any decision. *In any judicial proceedings under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said Court shall be confined to questions of law.* Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all civil cases except cases arising under the Workmen's Compensation Law of this Territory. An appeal may be taken from the decision of the United States District Court as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this Section, to enter exceptions to the rulings of the Commission and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding the Commission shall enter an order in accordance with such determination. A petition for judicial review shall

not act as a supersedeas or stay unless the Commission shall so order."

"Section 7.—Contributions.

(a) 'Payment.'

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Act, with respect to wages payable for employment occurring during such calendar year. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such regulation as the Commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2) * * *

(b) 'Rate of Contribution.' Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(1) 1.8 per centum with respect to employment during the calendar year 1937.

(2) With respect to employment after December 31, 1937, 2.7 per centum.

(c) 'Study of Experience Rating.' The Commission shall investigate and study the operation of this Act and the actual experience hereunder in the light of pertinent economic factors with a view to determining the advisability of establishing a rating system which would equitably rate the unemployment risk and fix the contribution to the fund of each employer and would encourage stabilization of employment.

Section 12. Territorial Employment Service. The Alaska Territorial employment service is hereby established under the Unemployment Compensation Commission. The Commission, in the conduct of such service, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Act and for the purposes of performing such functions as are within the purview of the Act of Congress entitled 'An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes', approved June 6, 1933 (48 Stat. 113; U.S.C., title 29, sec. 49 (c) as amended, hereinafter referred to as the 'Wagner-Peyser Act'. The provisions of the said Act of Congress are hereby accepted by the Territory, and the Unemployment Compensation Commission is hereby designated and constituted the agency of this Territory for the purposes of said Act. All moneys received by this Territory under the said Act of Congress shall be paid into the unemployment compensation administration fund and shall be expended solely for the maintenance of the Territorial system of public employment offices."

